No. 86-656 (3)

FILED
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JOSEPH F. SPANIOL, JR.

In the Supreme Court of the United States

OCTOBER TERM, 1986

RONALD W. REAGAN, ET AL., PETITIONERS

v.

JAMES ABOUREZK, ET AL.

GEORGE P. SHULTZ, ET AL., PETITIONERS

v.

CITY OF NEW YORK, ET AL.

GEORGE P. SHULTZ, ET AL., PETITIONERS

v.

BRUCE CRONIN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED OCTOBER 20, 1986
CERTIORARI GRANTED DECEMBER 15, 1986

13+PP

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 84-563

JAMES ABOUREZK, ET AL.

v.

RONALD WILSON REAGAN,
PRESIDENT OF THE UNITED STATES, ET AL.,

(G)09-26-85 4-Appellees' report to the Court (m-26) [#8]

(T)10-02-85 Notice from Clerk, District Court re: classified documents

(E)10-22-85 4-Oral argument transcript (1 volume) [#8]

(T)10-30-85 4-Letter from counsel for appellees advising of additional authorities pursuant to FRAP 28(j) (m-30) [8]

(E)11-06-85 4-Letter from counsel for appellants advising of additional authorities pursuant to FRAP 28(j) (m-4) [#8]

(E)11-19-85 4-Letter from counsel for appellees in response to letter from counsel for appellants of 11/4/85. (m-19) [#8]

(T)01-13-86 4-Letter from counsel for appellants advising of additional authorities pursuant to FRAP 28(j) (m-8) [8]

(D)03-11-86 Opinion for the Court filed by Circuit Judge Ginsburg.

(D)03-11-86 Dissenting opinion filed by Circuit Judge Bork.

(D)03-11-86 Judgment by this Court that the judgment of the District Court appealed from in these causes is hereby vacated and these

cases are remanded, in accordance with the Opinion for the Court filed herein this date.

(D)03-11-86 Mandate order.

(J)03-24-86 4-Appellants' bill of costs (m-20) (9)

(T)04-25-86 30-Appellees' petition for rehearing and suggestion for rehearing en banc (m-25) [1]

(E)05-23-86 Per curiam order denying appellees' petition for rehearing. Edwards, Ginsburg and Bork (who would grant the petition for rehearing), CJs.

(E)05-23-86 Per curiam order, en banc, that appellees' suggestion for rehearing is denied. CJ Robinson, Wright, Wald, Mikva, Edwards, Ginsburg, Bork, Scalia, Starr, Silberman and Buckley, CJs. (Bork, Scalia, Starr, Silberman and Buckley, CJs would grant the suggestion for rehearing *en banc*. Wright and Mikva, CJs, did not participate in this order.)

(D)06-02-86 Costs are awarded to James Abourezk, et al in the amount of $252.78 and taxed against Ronald Wilson Reagan, George P. Shultz, William French Smith, Alan C. Nelson.

(T)06-04-86 4-Appellees' motion to stay the mandate (m-4) [1]

(E)06-24-86 Per curiam order granting appellees' motion to stay the mandate. Absent notice to the Court that the Solicitor General has determined to file a petition for *certiorari*, the mandate will issue on July 8, 1986. Edwards, Ginsburg and Bork, CJs)

(C)07-08-86	4-Appellees' motion for a seven day stay of the mandate (m-8) (1)
(C)07-09-86	Per Curiam order denying appellees' motion for a seven day stay of mandate. (Edwards, Ginsburg and Bork, CJs)
(C)07-09-86	MANDATE ISSUED.
(E)08-15-86	Notice from Clerk, Supreme Court that an extension of time was granted to file a petition for a writ of certiorari to and including September 20, 1986 in No. A-99 [1]
(E)09-19-86	Notice from Clerk, Supreme Court that an extension of time was granted to file a petition for writ of certiorari to and including October 20, 1986 in No. A-99 [1]
(R)12-17-86	Letter from Clerk, Supreme Court advising that petition for writ of certiorari was granted in SC #86-656 on 12-15-86 [1]
	RECEIPT FROM DISTRICT COURT FOR RECORD 7-24-86
(C)09-28-84	Copy of notice of appeal and docket entries from Clerk, DC (n-2)
(C)09-28-84	Docketing fee paid in the District Court on 09-21-84
(C)09-28-84	Docketing statement mailed to counsel for appellants
(J)10-18-84	4-Appellants' docketing statement (m-18)
(V)10-23-84	Clerk's order, sua sponte, that the above captioned cases 84-5673, 84-5681 and 84-5708 are hereby consolidated
(V)10-23-84	Clerk's order that a briefing schedule is set as follows: Appellant(s) brief and appendix – 01/04/85; Appellee(s) brief – 02/04/85; Appellant(s) reply brief – 02/18/85. The Clerk shall include this

case in the pool of cases available for selection on this Court's March/April, 1985 calendar.

(J)10-24-84 4-Appellants' motion to consolidated appeals—see 10-23-84 order (m-23)

(J)01-04-85 2-Letters from parties consenting to the filing of the amicus curiae brief of Association of the Bar of the City of New York

(J)01-04-85 2-Letters from parties consenting to the filing of the amicus curiae brief of American Association of University Professors, et al.

(J)01-04-85 15-Brief of Association of the Bar of the City of New York as amicus curiae (m-3)

(J)01-04-85 15-Brief of American Association of University Professors, et al. as amicus curiae (m-4)

(J)01-07-85 15-Appellants' brief (m-4) (BIN 29-2)

(J)01-07-85 7-Joint appendix (m-4)

(J)01-29-85 4-Appellees' (federal) motion for leave to file motion to extend time to file brief (m-29) [6]

(F)02-05-85 Clerk's order that appellees' motion to extend time is granted; and the briefing schedule is revised as follows: Appellee(s) brief—02/27/85; Appellant(s) reply brief—03/13/85. This disposition will affect the calendaring of the instant case(s) and the Clerk shall include this case in the pool of cases available for selection on the Court's April/May calendar. (Leave to file the instant motion is hereby granted)

(F)02-05-85 4-Appellees' motion for enlargement of time to file brief (m-29)—per above order

(R)02-28-85	15-Appellees' brief (m-27)
(C)03-06-85	15-Appellees' corrected brief (m-6)
(R)03-19-85	15-Appellants' reply brief (m-13)
(G)04-10-85	15-Appellants' supplemental brief (m-8)
(G)08-21-85	Certified Original Record (2) volumes and (1) volume of transcript under separate cover BIN [B-5]
(E)09-04-85	Clerk's order, sua sponte, that the following times are allotted for oral argument: Appellants – 25 minutes and Appellees – 25 minutes.
(E)09-05-85	Per curiam order that in accordance with the representation made in Brief for the Appellees at 41 n.32, the court instructs Appellees to make available to the court, forthwith, the three classified affidavits, submitted to the district court *in camera.*
(T)09-09-85	4-Letter from counsel for appellees transmitting, for in camera inspection, the documents referred to in this Court's 9/5/85 order (m-9) [25]
(T)09-12-85	Notice from Clerk, District Court that a motion was filed to return classified documents to custody of government counsel
(E)09-23-85	Argued before Edwards, Ginsburg and Bork, CJS. [INACTIVE BIN NO. 62-3] The Court granted counsel leave to file supplemental memorandum.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 83-573

ABOUREZK, ET AL.

v.

REAGAN, ET AL., No. 83-373

1983		
Dec 15	1	COMPLAINT; appearance.
Dec 15		SUMMONS (5) issued.
1984		
Jan 3	2	INTERROGATORIES (first set) by pltffs. to deft. George P. Shultz (ml)
Jan 3	3	INTERROGATORIES (first set) by pltffs. to deft. William French Smith. (ml)
Jan 19	4	AFFIDAVIT OF SERVICE upon the U.S. Attorney on 12-15-83. (ml)
Jan 19	5	AFFIDAVIT OF SERVICE upon deft. William French Smith by certified mail on 12-19-83; upon deft. George P. Shultz by certified mail on 12-17-83; upon deft. Alan C. Nelson by certified mail on 12-20-83 and upon deft. Ronald Wilson Reagan by certified mail on 12-19-83; attachments (4). (ml)
Jan 30	6	MOTION by defts. for extension of time in which to respond to the complaint and for a protective order staying discovery; memorandum of P&A's. (ml)
Feb 9	7	MEMORANDUM & ORDER filed 2-8-84 directing deft. to file their answer to pltfs' complaint or a dispositive mo-

		tion on or before 3-1-84; staying discovery pending the Court's consideration of such dispositive motion. (N) GREENE, J. (ml)
Mar 1	8	MOTION by defts. for leave to file a consolidated motion on the merits, and to exceed the page limit specified in the Local Rules; Exhibit (Motion to Dismiss) (ml)
a.	9	PROFFER & MOTION by defts. for leave to submit classified affidavits for the Court's in camera inspection; memorandum in support. (ml)
Mar 9	10	MOTION by pltffs. and memorandum in support for extension of time in which to respond to defts' motion (1) for dismissal or summary judgment and (2) for leave to submit classified affidavits in camera. (ml)
Mar. 15	11	ORDER filed 3-14-84 granting pltfs' motion for extension of time until 4-16-84 to respond to defts' consolidated alternative motions for dismissal or summary judgment, and motion for leave to submit classified affidavits in camera. (N) GREENE, J. (ml)
Apr 6	12	MOTION by pltffs. for leave to file a consolidated response to defts' alternative consolidated motions for dismissal or summary judgment and to exceed the page limit specified in the Local Rules. (ml)
Apr 11	13	ORDER filed 4-10-84 granting pltfs' motion for leave to file a consolidated response to defts' alternative motion for dismissal or summary judgement. (N) GREENE, J. (ml)

Apr 16	14	MOTION by pltffs. and memorandum in support thereof for three day extension of time in which to respond to defts' motions (1) for dismissal or summary judgment and (2) for leave to submit classified affidavits in camera. (ml)
Apr 19	15	ORDER filed 4-18-84 granting pltffs' motion for an extension of time until 4-19-84 to file response to defts' consolidated motions for dismissal or summary judgment, and motion for leave to submit classified affidavits in camera. (N) GREENE, J. (ml)
Apr 19	16	MEMORANDUM by pltfs'. in opposition to defts'. motion for leave to submit classified affidavits for the Court's in camera inspection. (dc)
Apr 19	17	OPPOSITION by pltfs'. to defts'. motion to dismiss or, in the alternative, for summary judgment; memorandum of P&A's in opposition to defts'. motion to dismiss or, in the alternative, for summary judgment; appendix A&B; statement of genuine issues; affidavits and declarations (28) in opposition to defts'. motion to dismiss or, in the alternative, for summary judgment. (dc)
Apr 26	18	MOTION by defts. and memorandum in support thereof for an extension of time in which to reply to pltffs' opposition to the government's dispositive motion. (ml)
May 1	19	ORDER filed 4-30-84 granting defts' motion for an extension of time until 5-7-84 to file reply to pltffs' opposition to motion to dismiss. (N) GREENE, J. (ml)

May 2	20	NOTICE by pltffs. of filing executed declarations; declaration of Chai R. Feldblum; declaration of Jill Gay; declaration of Martin Hamilton; declaration of Anthony Palomba; declaration of Olga Finlay; declaration of Nino Pasti with attachment; declaration of Richard Parker. (ml)
May 2	21	MOTION by pltffs. and memorandum in support thereof to amend complaint by adding two new pltffs; Exhibit (First Amended Complaint). (ml)
May 7	22	MOTION by defts. for leave to file a reply memorandum exceeding the page limit specified in the local rules; Exhibit (Reply). (ml)
May 8	23	RESPONSE by defts. to motion to add new parties-pltf. (ml)
May 9	24	ERRATA by defts. to their reply to pltffs' opposition to defts' motion to dismiss or, alternatively, for summary judgment. (ml)
May 11	25	ORDER filed 5-9-84 granting defts' motion for leave to file a reply memorandum exceeding the twenty-five page limit. (N) GREENE, J. (ml)
May 11	26	REPLY by defts. to pltffs' opposition to defts' motion to dismiss or, alternatively, for summary judgment; tale of contents; second affidavit of Louis P. Goelz; reply to statement of genuine issues. (ml)
May 14	27	ORDER filed 5-11-84 granting pltffs' motion for leave to amend their complaint by the addition of Exhibit A. (N) GREENE, J. (ml)

May 14	28	FIRST AMENDED COMPLAINT by pltffs. for injunctive and declaratory relief. (ml)
Jul 2		MOTION of defts. to dismiss and motion to submit classified affidavits argued and taken under advisement. (Rep. N. Sokal) GREENE, J. (ml)
Jul 9	29	MEMORANDUM ORDER filed 7-5-84 granting defts' motion for leave to submit *in camera* three classified affidavits of Secretary Lawrence Eagleburger. (N) GREENE, J. (ml)
Jul 10	30	LETTER dated 7-5-84 to Judge Greene from Charles S. Sims, counsel for pltffs. "Let this be filed." (fiat) GREENE, J. (ml)
Jul 12	31	NOTICE by defts of in Camera Submission of Classified Affidavits. (nb)
Jul 19	32	ORDER filed 7-17-84 directing that Mr. Eagleburger's Classified Affidavits be placed under Seal. (N) GREENE, J. (sb)
Jul 24	33	TRANSCRIPT OF PROCEEDINGS from 7-2-84; Pages 1-62; (Rep: Nicholas Sokal). (nb)
Jul 31	34	OPINION filed 7-27-84. (N) GREENE, J. (ml)
Jul 31	35	ORDER filed 7-27-84 granting defts' motion for summary judgment; dismissing action. (N) GREENE, J. (ml)
Sep 21	36	NOTICE of appeal by pltffs. from order entered 7/27/84; $5.00 filing fee and $65.00 docketing fee paid and credited to U.S. Copy of notice mailed to Thomas W. Hussey. (ew)
Sep 26		PRELIMINARY RECORD transmitted to USCA; USCA *84-5673*

CITY OF NEW YORK, ET AL.

v.

SHULTZ, ET AL., No. 83-374

1983			
Dec 15	1	COMPLAINT; appearance.	mf
Dec 15		SUMMONS (4) issued.	
1984			
Jan 3	2	FIRST set of interrogatories by pltffs. and document requests to deft William French Smith.	(ew)
Jan 3	3	FIRST set of interrogatories by pltffs. and document requests to deft. George P. Shultz.	
Jan 19	4	DECLARATION OF service of process of Kathryn Carovano of service of summons and complaint upon U.S. Attorney on 12/21/83.	(ew)
Jan 19	5	DECLARATION of service of process of Sarah K. Householder of service of summons and complaint upon Secretary George P. Shultz, Dept. of State on 12/17/83; William French Smith, Attorney General on 12/19/83 & Alan Nelson, Director INS on 12/20/83; Attachments (3).	(ew)
Jan 30	6	MOTION of defts. for extension of time in which to respond to the complaint and for a protective order staying discovery; memorandum.	(ew)
Feb 15	7	MEMORANDUM AND ORDER filed 2-8-84 directing defts to file their answer to pltfs complaints or a dispos-	

		itive motion on or before 3-1-84; staying discovery pending the Court's consideration of such dispositive motion. (N) (orig. filed in CA 83-3739) GREENE, J. (dj)
Mar 1	8	MOTION of defts for leave to file a consolidated motion on the Merits and to exceed the page limit specified in the Local Rules; Exhibit (Motion to dismiss or, in the alternative, for summary judgment. (Original filed in CA 83-3739) (dj)
Mar 1	9	PROFFER AND MOTION of defts for leave to submit classified affidavits for the Court's in camera inspection; memorandum. (Original filed in CA 83-3739) (dj)
Mar 9	10	MOTION and memorandum by pltffs. in support thereof for extension of time in which to respond to defts motions (1) for dismissal or summary judgment and (2) for leave to submit classified affidavits in camera. (ew)
Mar 19	11	ORDER filed 3/14/84 granting pltffs motion for extension of time until 4/15/84 to respond to defts consolidated alternative motions for dismissal or summary judgment, and motion for leave to submit classified affidavits in Camera. (N) GREENE, J. (ew)
Apr 6	12	MOTION of pltffs. for leave to file a consolidated response to defts alternative consolidated motions for dismissal or summary judgment and to exceed the page limit specified in the Local Rules. (Orig. filed in 83-3739) (ew)
Apr 10	13	ORDER granting pltffs motion for leave to file a consolidated response to defts

alternative motions for dismissal or summary judgment.
(N) GREENE, J. (ew)

Apr 16 14 MOTION of pltffs. and memorandum in support thereof for three day extension of time in which to respond to defts motions (1) for dismissal or summary judgment & (2) for leave to submit classified affidavits in camera.

Apr 18 15 ORDER granting pltfs motion for an extension of time until April 19, 1984 to file response to defts consolidated motions for dismissal or summary judgment and motion for leave to submit classified affidavits in camera.
(N) GREENE, J. (ew)

April 19 MEMORANDUM by pltf. in opposition to defts. motion for leave to submit classified affidavits for the court's in camera inspection. (Filed in 83-3739)
(ew)

April 19 OPPOSITION by pltfs. to defts. motion to dismiss or, in the alternative, for summary judgment; memorandum of points and authorities; appendix; statement of genuine issues; affidavits & declarations in support.
(Filed in 83-3739) (ew)

April 26 16 MOTION of defts. and memorandum in support thereof for an extension of time in which to reply to pltf. opposition to the Government's dispositive motion. (Orig. filed in 83-3739) (ew)

April 30 17 ORDER granting defts motion for an extension of time until 5/7/84 to file its reply to pltfs opposition to motion to dismiss. (N) GREENE, J. (ew)

May 2		NOTICE OF FILING by pltfs of declarations of CHai Feldblum, Jill Gay, Martin Hamilton, Anthony Palomba, Olga Finlay, Nino Pasti, and Richard Parker. (Filed in CA 83-3739). (mj)
May 7	18	MOTION of defts. for leave to file a reply memorandum exceeding the page limit specified in the local rules; Exhibit (reply) (Orig. filed in 83-3739) (ew)
May 9	19	ERRATA by defts. re typographical errors appearing in their reply to pltfs opposition to defts motion to dismiss. (ew)
May 9	20	ORDER granting defts motion for leave to file a reply memorandum exceeding the twenty-five page limit. GREENE, J. (ew)
May 9	21	REPLY by defts. to pltfs opposition to defts motion to dismiss or, alternatively for summary judgment; table of contents; second affidavit of Louis P. Goelz; statement of genuine issues. (ew)
July 6		MOTION of defts. (Held 7/2/84) to dismiss and motion to submit classified affidavits argued and taken under advisement. (Rep: Nicholas Sokal) GREENE, J. (mj)
July 6	22	MEMORANDUM ORDER filed 7/5/84 granting deft's motion for leave to submit in camera three classified affidavits of Secretary Lawrence Eagleburger. (N) GREENE, J. (mj)
July 12	23	NOTICE by defts. of in camera submissions of classified affidavits. (mj)
Jul 17	24	ORDER directing that Mr. Eagleburger's classified affidavits be placed under seal. (N) GREENE, J. (ew)

Jul 31	25	OPINION filed 7/27/84. (N) GREENE, J. (ew)
Jul 31	26	ORDER filed 7/27/84 granting defts motion for summary judgment; dismissing action. (N) GREENE, J. (ew)
Sept 21	27	NOTICE OF APPEAL by pltfs from order entered 7-31-84; $5.00 USDC fee and $65.00 USCA fee paid and credited to U.S. Treasury; copies of notice sent to: Thomas W. Hussey, Esq. (nb)
Sept 26		PRELIMINARY RECORD transmitted to USCA; USCA# 84-5681. (nb)

CRONIN, ET AL.

v.

SHULTZ, ET AL., No. 83-389

1983

Dec 28	1	COMPLAINT; appearance (bb)
Dec 28		SUMMONS (4) issued (bb)
Dec 30	2	INTERROGATORIES (first set) of pltfs to deft William French Smith. (io)
Dec 30	3	INTERROGATORIES (first set) of pltfs to deft George P. Shultz. (io)

1984

Jan 5	4	AFFIDAVIT OF SERVICE upon U.S. Attorney on 12-28-83. (io)
Jan 19	5	AFFIDAVIT OF SERVICE upon U.S. Attorney General by certified mail on 1-5-84; upon deft Shultz by certified mail on 1-6-84; upon deft Nelson by certified mail on 1-6-84; attachments. (io)
Feb 8	6	MEMORANDUM AND ORDER directing deft to file their answer to pltfs complaints or a dispositive motion on or before 3-1-84; staying discovery pending the Court's consideration of such dispositive motion. (Orig. filed in CA 83-3739) (N) GREENE, J. (io)
Mar 1	7	MOTION of deft for leave to file consolidated motion on the merits, and to exceed the page limit specified in the Local Rules; Exhibit (Motion to dismiss or, in the alternative, for summary judgment). (io) (Orig. filed in 83-3739)
Mar	8	PROFFER AND MOTION of defts for leave to submit classified affidavits for

		the Court's in camera inspection; memorandum in support. (Originial filed in 83-3739) (io)
Mar 9	9	MOTION AND MEMORANDUM of pltfs in support thereof for extension of time in which to respond to defts' motions (1) for dismissal or summary judgment and (2) for leave to submit classified affidavits in camera. (Original filed in 83-3739) (io)
Mar 15	10	ORDER filed 3-14-84 granting pltfs' motion for extension of time until 4-16-84 to respond to defts' consolidated alternative motions for dismissal or summary judgment, and motion for leave to submit classified affidavits in camera. (N) GREENE, J. (io)
Apr 6	11	MOTION of pltfs for leave to file a consolidated response to defts' alternative consolidated motions for dismissal or summary judgment and to exceed the page limit specified in the Local Rules. (Orig. filed in CA 83-3739). (io)
Apr 10	12	ORDER granting pltfs' motion for leave to file a consolidated response to defts' alternative motions for dismissal or summary judgment. (N) GREENE, J. (io)
Apr 16	13	MOTION AND MEMORANDUM of pltfs in support thereof for three day extension of time in which to respond to defts' motions (1) for dismissal or summary judgment and (2) for leave to submit classified affidavits in camera. (Orig. filed in CA 83-3739) (io)
Apr 19	14	ORDER filed 4/18/84 granting pltf's motion for an extension of time until April

19, 1984 to file response to defts' consolidated motions for dismissal or summary judgment and motions for leave to submit classified affidavits in camera. (N) GREENE, J. (mj)

Apr 19 15 MEMORANDUM by pltf. in opposition to defts' motion for leave to submit classified affidavits for the court's in camera inspection. (Filed in 83-3739) (mj)

Apr 19 16 OPPOSITION by pltf. to defts' motion to dismiss or, in the alternative, for summary judgment; Memorandum of P & A's; Table of Contents; Table of Authorities; Appendices A and B; Statement of Genuine Issues; Affidavits and Declarations in Opposition to defts' motion to dismiss of Charles S. Sims, James Abourezk; Thomas Borge; Robert L. Borosage; Douglass W. Cassel, Jr; Joseph T. Eldridge; Chai R. Feldblum; Olga Finlay; Marily Flood; Jill Gay; Darlene Gramigna; Martin Hamilton; Thomas H. Holloway; Sidney Lens; Leonor Rodriquez Lezano; Salley McConnell-Ginet; Leonard C. Meeker; Anthony Palomba; Nino Pasti; Barbara Corrado Pope; Anne Posel; David S. Rudstein; Charles E. Schumer; Richard S. Scobie; Philip B. Snyder; Rob Warden; Mortimer B. Zuckerman; Michael Maggio; and James M. Shannon. (Filed in 83-3739) (mj)

Apr 26 17 COPY of MOTION and Memorandum by defendants in support thereof for an

		extension of time in which to reply to pltfs' opposition to the Government's dispositive motion. (Original filed in 83-3739) (vajm)
May 3	18	ORDER filed 4-30-84 granting defts' motion for an extension of time until 5-7-84 to file reply to pltfs' opposition to motion to dismiss. (N) GREENE, J. (io)
May 2	19	NOTICE of City of New York of filing declarations of Chai Feldblum, Jill Gay, Martin Hamilton, Anthony Palomba, Olga Finlay, Nino Pasti, and Richard Parker as part of the record. (Original filed in 83-3739)
May 7	20	MOTION of defts for leave to file a reply memorandum exceeding the page limit specified in the local rules; Exhibit (Reply to pltfs' opposition to defts' motion to dismiss, or, alternatively for summary judgment). (Orig. filed in CA 83-3739) (io)
May 9	21	ERRATA by defts typographical errors appearing in their Reply to Pltfs Opposition to Defts Motion to Dismiss or, Alternatively, for Summary Judgment. (Orig. filed in C.A. 83-3739) (nb)
May 10	22	ORDER filed 5-9-84 granting defts' motion for leave to file a reply memorandum exceeding the twenty-five page limit. (Orig. filed in CA 83-3739) (N) GREENE, J. (io)
May 10	23	REPLY of defts to pltfs' opposition to defts' motion to dismiss or, alternatively, for summary judgment; table of contents; attachment; statement of genuine issues. (Orig. filed in CA 83-3739) (io)

July 2		MOTION of defts. to dismiss and motion to submit classified affidavits argued and taken under advisement. (Rep. N. Sokal) GREENE, J. (mf)
July 6	24	MEMORANDUM ORDER (filed 7/5/84) granting defts' motion for leave to submit *in camera* three classified affidavits of Secretary Lawrence Eagleburger. (N) GREENE, J. (mf)
Jul 12	25	NOTICE by defts. of in camera submission of classified affidavits. (ew)
July 17	26	ORDER directing that Mr. Eagleburger's classified affidavit be placed under seal. (N) GREENE, J. (io)
July 30	27	OPINION filed 7-27-84. (N) GREENE, J. (io)
July 30	28	ORDER filed 7-27-84 granting defts' motion for summary judgment; dismissing action. (N) GREENE, J. (io)
Oct 9	29	NOTICE OF APPEAL (filed 9-21-84) of pltfs from order of 7-27-84; $5.00 filing fee and $65.00 docketing fee paid and credited to U.S. Copie mailed to: Thomas W. Hussey. (io)
Oct 9		PRELIMINARY RECORD transmitted to USCA; USCA 84-5708. (io)

APPENDIX A

March 1, 1982

MEMORANDUM FOR WILLIAM B. WARK
Executive Secretary, Interdepartmental Committee
on Internal Security (ICIS)

Re: The Immigration and Nationality Act
of 1952—Technology Transfer

You have asked for our opinion regarding whether the Immigration and Nationality Act of 1952 authorizes the denial of visas where there is reason to believe that the issuance of a visa may result in exposure to the foreign visitor of technology that is otherwise protected from transfer to foreign persons by U.S. law. We conclude that, under certain circumstances, visas may be denied pursuant to 8 U.S.C. § 1182(a) (27) in order to prevent illegal technology transfers but that this determination requires careful consideration of the facts and circumstances of each case based on established guidelines. An interagency group should be convened to recommend such guidelines and the process by which they will be applied.

Section 212(a) (27) of the act [8 U.S.C. § 1182(a) (27)] reads as follows:

> Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission to the United States:
>
> * * * * *
>
> (27) Aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or inciden-

tally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States;

* * * *

Your question raises two issues concerning this provision: (1) whether adverse technology transfer consequences may properly be taken into account in determining whether an alien's activities would be "prejudicial to the public interest, or endanger the welfare, safety, or security of the United States"; and (2) if so, what facts are necessary to trigger this paragraph, thereby rendering an alien inadmissible to the United States.

I.

With respect to the first issue, the legislative history relating directly to the passage of the Immigration and Nationality Act of 1952 can be read as limiting application of section 212(a) (27) to cases where the foreign visitor poses a threat to the internal security of the U.S. However, it is also necessary to consult the legislative history of the Subversive Activities Control Act of 1950 (SACA), 64 Stat. 987, since the language of section 212(a) (27) was taken almost verbatim from section 22 of that Act. In summary, Congress' choice of language in the SACA is instructive, particularly its use of the phrase "prejudicial to the public interest," because that phrase had a well-settled administrative interpretation in 1950.

Prior to enactment of the SACA, Congress had authorized the President to impose additional restrictions on the entry of persons into the United States during times of war or national emergency.[1] In Proclamation 2523, 3 CFR 270 (1943 Cum. Supp.), the President declared that an alien

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[1]Act of May 22, 1918, 40 Stat. 559, as amended by the Act of June 21, 1941, 55 Stat. 252, hereinafter referred to as the Passport Control Act of 1918.

would not be permitted to enter if his entry would be "prejudicial to the interests of the United States," as provided in regulations to be promulgated by the Secretary of State in consultation with the Attorney General. Proclamation 2523 and the regulations issued by the Secretary of State,[2] which were still in effect at the time, were discussed in the Senate Report that first proposed the SACA as part of the body of immigration law upon which Congress was building. S. Rep. No. 2230, 81st Cong., 2d Sess. 22 (1950). Thus, the prohibition in section 212(a) (27) against the entry of aliens when there is reason to believe they intend to engage in activities "prejudicial to the public interest" appears to be a direct descendant of Presidential Proclamation 2523 and its implementing regulations.[3] Those regulations listed eleven categories of aliens who were inadmissible on the ground that their entry would be "prejudicial to the public interest" or "prejudicial to the interests of the United States," one of which is relevant to the question of the extent to which technology transfer may be the basis for denying entry. The regulations provided:

> § 175.53 *Classes of aliens whose entry is deemed to be prejudicial to the public interest.* The entry of an alien who is within one of the following categories shall be deemed to be prejudicial to the interests of the United States . . .
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> * * *
>
> (d) Any alien engaged in activities designed to obstruct, impede, retard, delay, or *counteract* the effectiveness of the *measures adopted by the*

[2] 8 CFR 175.53 (1949).

[3] April 11, 1977 memorandum to Commissioner Leonard F. Chapman, Immigration and Naturalization Service, from Acting Assistant Attorney General John M. Harmon, Office of Legal Counsel.

Government of the United States for the defense of the United States . . . . (Emphasis supplied.)

This particular category is instructive because it indicates that section 212(a)(27) cannot be read as limited to classic internal security cases, i.e., those which involve persons who believe in or advocate objectionable doctrines, but may be extended to include any alien who attempts to circumvent measures adopted by the United States for the defense of the country even in the absence of war or national emergency.[4]

Such measures were adopted by the Congress in the Export Administration Act of 1979.[5] Congress specifically recognized the need to control exports of technology that could made a significant contribution to the military potential of any country that would be detrimental to the national security of the United States.[6] Declaring that it was the policy of the United States to restrict the export of goods and technology in order to avoid detrimental effects on the national security,[7] the Congress authorized a regulatory and licensing framework to control the export of critical technology and legislated both civil and criminal penalties for violation of the Act or any regulation, order, or license issued thereunder.[8] It seems clear that activities prohibited by statute in the interests of the national security, which includes the national defense, would fall within

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[4] The language of the Passport Control Act of 1918, from which the authority for the State Department regulations flowed, is quite similar to that included in the SACA, from which section 212(a)(27)'s language was taken. The major difference is that the Passport Control Act provision, unlike that in the SACA, is limited to time of war or national emergency.

[5] 50 U.S.C. App. § 2401 *et seq.*

[6] *Id.* § 2401(5) and (8). The term "national security" is used to include considerations of national defense. *See, e.g.*, E.O. 12065, § 6-104.

[7] 50 U.S.C. App. § 2402(2) (A).

[8] *Id.* § 2410.

the purview of the phase "activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States," as it was understood in 1952 when the Immigration and Nationality Act was enacted.

We believe, moreover, that our conclusion as to the applicability of section 212(a)(27) to prevent technology transfer would be valid even in the absence of a well-settled administrative meaning for that phrase in 1952. Certainly actions that are prohibited by a licensing scheme designed to protect the national security and punishable under a criminal provision to enforce the regulatory framework must be regarded as activities that Congress would agree should be considered to be prejudicial to the public interest and to endanger the security of the United States.

> Even in briefest outline [the legislative controls on aliens who seek to enter the United States] are manifestly complex, redundant, and frequently obscure. But the very prolixity of these legislative expressions is evidence of the urgent desire of Congress to shut the gates of America against aliens who may seek to undermine the national strength and safety.

C. Gordon, *The Immigration Process and National Security*, 24 Temp. L. Q. 302, 307 (1951).

II.

Having determined that adverse technology transfer consequences may be taken into account in determining whether an alien is excludable under section 212(a) (27) of the Act, we turn to the question of what facts are necessary to trigger this paragraph, thereby rendering an alien inadmissible to the United States. This question is difficult to consider in the absence of specific cases. It is a mixed question of law and fact requiring the expertise of

intelligence and export control enforcement personnel, and should be the subject of further discussions between the State and Justice Departments and other interested entities. As a general matter, however, we note that the only inquiry to be made under paragraph (27) is whether there is "reason to believe" that an alien seeks "to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest . . . or endanger the . . . security of the United States."

Obviously, the mere fact that a businessman or scientist might be exposed to controlled technology while in the United States, standing alone, is not enough to trigger section 212(a) (27). The law as framed seems to permit findings of ineligibility under this section only as to persons whom we have reason to believe intend to engage in proscribed activities. Nevertheless, there is no "probability" requirement in paragraph (27). It requires exclusion if the Attorney General or consular officer "has reason to believe" that an alien seeks entry into the United States even "incidentally" to engage in activities prejudicial to the security of the United States. Clearly, this standard encompasses those visitors who have a substantial connection to a foreign hostile intelligence service, *i.e.*, known intelligence officers or reliably identified co-optees of a hostile intelligence service.[9] In our opinion, however, paragraph (27) may come into play even where there is no substantial connection to an intelligence service if prudent experts can point to articulable facts which, taken together with rational inferences from those facts, reasonably warrant the belief than an alien seeks to enter this country to acquire controlled technology. We believe, for example, that where an alien seeks admission to attend a conference, including those aspects of the conference that will

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[9] Memorandum from Associate Attorney General Michael J. Egan to Deputy Secretary of State Warren M. Christopher and FBI Director William H. Webster, dated January 30, 1979.

include controlled technology, sufficient grounds may well exist for his exclusion. Likewise, actions of an alien on previous visits, or a known pattern and practice of certain groups of aliens, can often be valid indicators of future intentions and may be considered in determining whether such person is admissible.[10]

The determination of admissibility, however, must be made on a case-by-case basis. As noted above, all of the problems associated with that determination cannot be resolved in the abstract, and general guidelines should be the subject of interagency discussion prior to any case-by-case review. Nevertheless, our conclusion that paragraph (27) contains a relatively low "standard of proof" is surprised by the legislative history of the Immigration and Nationality Act of 1952. A 1950 Senate report found that

> "*wider discretion* should be granted to those charged with administering the laws relating to the entry of aliens into this country to deny admission to those aliens who are known or there is reason to believe will, or would be likely to engage in any activity subversive to the National Security . . . ." (Emphasis supplied.)

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[10] There are obvious differences between these situations and the classic situation involving a known or suspected operative of a hostile foreign intelligence service that is the subject of the DoJ memorandum cited in footnote 9 and of the interagency committee (the Egan Committee) that was established to consider such cases. Where a particular case does not meet the criteria of the "spy" cases, i.e., a substantial connection with a foreign hostile intelligence service, the objection is really to access to controlled technology rather than travel generally in the United States. Because of that difference, the possibility as well as the effectiveness of placing restrictions on the visa, rather than total exclusion, should be explored. The purpose, length and itinerary of a proposed visit under these circumstances can be valid indicators of the probability or possibility that the applicant seeks to enter this country to engage in "prejudicial activities."

S. Rep. No. 1515, 81st Cong., 2d Sess. 800 (1950).[11]

III.

Two additional observations concerning section 212(a)(27) are appropriate. First, unlike paragraph (28), the Attorney General does not have discretion to waive the exclusion requirement under paragraph (27). Once an alien is found to fall within the purview of paragraph (27), he may not be admitted, and other aliens in identical circumstances must also be excluded, even where their presence might be beneficial for other reasons. This consideration should also be the subject of some deliberation when interagency meetings take place to determine what facts will trigger paragraph (27) in technology transfer cases.

Second, because paragraph (27) cannot be waived by the Attorney General, exclusion under this paragraph is not reviewable by the courts. The unadmitted and nonresident alien has no constitutional right of entry into the United States as a nonimmigrant or otherwise.[12] "The [Supreme] Court without exception has sustained Congress' 'plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden.' "[13] The courts generally recognize that power to protect the country against foreign dangers is to be exercised exclusively by the political branches of

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[11] S. Rep. No. 1515 contained the basic findings to support the Immigration and Nationality Act of 1952. H.R. Rep. No. 1365, 82d Cong., 2d Sess. 27 (1952). It is, therefore, especially instructive in interpreting that Act even though it was prepared in a prior Congress.

[12] *United States ex rel. Turner* v. *Williams*, 194 U.S. 279, 292 (1904), cited with approval in *Kliendienst* v. *Mandel*, 408 U.S. 753 at 762 (1972).

[13] *Kleindienst* v. *Mandel, supra* note 12, at 766 (citations omitted).

government.[14] Likewise, it is our view that, absent discretion to waive the exclusion requirement, a determination of inadmissibility would be unreviewable even where the plaintiffs are U.S. citizens asserting their own First Amendment rights to have an alien enter and to hear him explain and seek to defend his views. Cf. *Kleindienst* v. *Mandel*, 408 U.S. 753 (1972).

IV.

In conclusion, we believe that visas may be denied pursuant to 8 U.S.C. § 1182 (a) (27) in order to prevent illegal technology transfers. While the criteria used to determine ineligibility for entry must be directly related to the determinations required to be made by the terms of paragraph (27), that paragraph falls far short of requiring probable cause to believe an alien will engage in proscribed activities upon entry to the United States. We recommend, however, that guidelines similar to those that govern the deliberations of the Egan Committee be established with regard to the application of paragraph (27) to visa applicants for reasons of technology transfer.

/s/ MARY C. LAWTON
Mary C. Lawton
Counsel for Intelligence Policy
Office of Intelligence Policy and Review

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[14] *The Chinese Exclusion Case*, 130 U.S. 581 (1889); *Fong Yue Ting* v. *United States*, 149 U.S. 698 (1893). Since 1893 the Court has on numerous occasions reaffirmed this principle. Some examples of these general reaffirmations are set forth in the *Mandel* case, *supra* note 12, at 766 n. 6.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Plaintiffs,

v.

GEORGE P. SHULTZ, Secretary of State, Department of State,
Washington, D.C. 20520;

WILLIAM FRENCH SMITH, Attorney General;
Department of Justice,
Washington, D.C. 20530; and

ALAN C. NELSON, Director of the Immigration and Naturalization Service, 425 I Street, N.W.,
Washington, D.C. 20536,

Defendants.

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief challenging defendants' refusal to grant a visa to two Cuban women, Olga Finlay and Leonor Rodriquez Lezcano, for a lecture tour and meetings on issues of particular interest to women. It is brought by individuals and groups interested in such issues and in Latin American and Carribean Studies. To educate themselves further about Cuban society and the role of women in Cuba, plaintiffs

invited Ms. Finlay and Ms. Lezcano to speak and meet with them, in the United States, about these subjects. The only asserted basis for their exclusion from the United States is defendants' claim that the Cuban women's speeches in America would be "prejudicial to the public interest" because of defendants' objections to their political beliefs and associations. As a result of that determination, reaffirmed on October 21, 1983, the unique perspective that Mrs. Finlay and Ms. Lezcano can offer on the role of women in contemporary Cuba has been barred from this country.

2. The exclusion of Ms. Finlay and Ms. Lezcano from the United States is not an isolated event. Rather, the defendants have employed the visa power to shape and limit political debate within the United States. The purpose and effect of this policy has been to deny Americans the opportunity to hear and meet with significant and respected critics of American policy, and advocates of policies and social systems which differ from ours. Such a pattern and practice of ideological exclusions is inconsistent with the basic premises of a free society. Defendant's actions in this regard violate Congressional intent as well as the constitutional guarantees of free speech and assembly embodied in the First Amendment.

JURISDICTION AND VENUE

3. Jursidiction is properly vested in this Court pursuant to 28 U.S.C. §§1331 and 1361 and 8 U.S.C. §1329, over causes of action arising under 8 U.S.C. §1182 (a) (27), 5 U.S.C. §702, and the First and Fifth Amendments to the Constitution.

4. The venue of this action lies in this district under the provisions of 28 U.S.C. §1391 (e).

PLAINTIFFS

5. The City of New York is a municipal corporation which has the power to sue on its own behalf and on behalf of its constituent agencies. One of its agencies is the Commission on the Status of Women, which was established in 1975 in order to, *inter alia*, conduct research and investigations into the status of women in the City and elsewhere in order to recommend institutional changes. On September 7, 1983, the Commission invited Ms. Finlay and Ms. Rodriquez to meet with its members, staff and other interested citizens of New York City to discuss such issues concerning women as day care and the role of women in Cuban society.

6. Edna Acosta-Belen is the Chair of the Puerto-Rican, Latin-American Caribbean Studies Program at the State University of New York at Albany, an undergraduate and graduate academic program in Puerto Rican, Latin-American and Caribbean Studies. On behalf of the Program, she issued a speaking invitation to Ms. Finlay and Ms. Rodriquez on September 20, 1983.

7. Chai Feldblum is affiliated with the Women's Law Association of Harvard Law School, an association chartered by Harvard Law School to provide services and information to women at Harvard. On behalf of the Association, she issued a speaking invitation to Ms. Finlay and Ms. Rodriguez on September 28, 1983.

8. Jill Gay is the Associate Director of the Third World Women's Project of the Institute for Policy Studies, an organization that sponsors Third World women to engage in dialogue with American groups. On behalf of the Project, she issued a speaking invitation to Ms. Finlay and Ms. Rodriguez on or about September 15, 1983.

9. Thomas H. Holloway is the Director of the Cornell University Latin American Studies Program, an interdisciplinary program coordinating and promoting Latin American studies initiatives at Cornell. On behalf of the

Program, he issued a speaking invitation to Ms. Finlay and Ms. Rodriquez on September 8, 1983.

10. Sally McConnell-Ginet is the Director of the Cornell University Women's Studies Program an interdisciplinary program concerned with teaching and research concerning the status of women. On behalf of the Program, she issued a speaking invitation to Ms. Finlay and Ms. Rodriguez on September 8, 1983.

11. Barbara Corrado Pope is Director of the Women's Studies Program at the University of Oregon. On behalf of the Program, she issued a speaking invitation to Ms. Finlay and Ms. Rodriguez on October 13, 1983.

12. David S. Rudstein is a Professor of Law and Associate Dean at the Chicago-Kent College of Law of the Illinois Institute of Technology. On behalf of the law school, he issued a speaking invitation to Ms. Finlay and Ms. Rodriguez on October 13, 1983.

13. Mary Kay Vaughan is the Director of the Latin American Studies Program of the University of Illinois at Chicago, a research and teaching program that focuses on Latin America and Hispanics in the United States. On behalf of the program, she issued a speaking invitation to Ms. Finlay and Ms. Rodriguez some time in October, 1983.

14. The Committee on Religion, Ethics and Social Policy is an independent, tax-exempt educational institution that promotes programs to investigate the interrelationship of values, ethics and public policy. It issued a speaking invitation to Ms. Finlay and Ms. Rodriguez on August 12, 1983.

15. The Committee on U.S.-Latin American Relations is a student organization at Cornell University that conducts public education on Latin America and the influence there of United States foreign policy. It issued a speaking invitation to Ms. Finlay and Ms. Rodriguez on August 12, 1983.

16. The Institute for Policy Studies is an independent research organization and educational institute established in 1963. It issued a speaking invitation to Ms. Finlay and Ms. Rodriguez on or about September 15, 1983.

17. The New College of California is a four-year independent liberal arts college with professional programs in law and graduate psychology. It issued a speaking invitation to Ms. Finlay and Ms. Rodriguez on September 15, 1983.

DEFENDANTS

18. George P. Shultz is the Secretary of State of the United States and the executive head of the Department of State. In that capacity and through his agents, he issues non-immigrant visas under 8 U.S.C. § 201 (a) (2) and determines ineligibility for receiving such visas under 8 U.S.C. § 1182 (a) (27). Defendant Shultz is sued solely in his official capacity.

19. William French Smith is the Attorney General of the United States. In that capacity and through his agents, he exercises the power to bar visitors to the United States, including those who receive visas from the Secretary of State, under 8 U.S.C. § 1182 (a) (27) and otherwise. Defendant Smith is sued solely in his officia! capacity.

20. Alan C. Nelson is the Commisssioner of the Immigration and Naturalization Service. In that capacity and through his agents, he exercises the power to bar visitors to the United States, including those who receive visas from the Secretary of State. Defendant Nelson is sued soley in his official capacity.

STATEMENT OF THE CASE

21. Olga Finlay is a Cuban lawyer who since 1980 has represented the Federation of Cuban Women at international organizations. She is the author of "Cuban Women:

1975-1979", "The Rights of Children in Cuba" in *Children of Cuba: Twenty Years,* and a forthcoming monograph on the legal rights of children of Cuba, and collaborated with the noted American sociologist C. Wright Mills on a book concerning the Cuban Revolution, *Listen, Yankee.* In 1979, she was secretary of the Cuban committee established as part of UNICEF's International Year of the Child. In 1977, she was the Cuban representative to the United Nations Commission on the Status of Women. She is currently the President of the advisory workgroup of the Federation of Cuban Women. The topics on which Ms. Finlay was to speak in the United States included Women in Cuba; Children in Cuba; The Family Code (the legal code which requires both husband and wife to share equally the burdens of housework and childrearing); and the Legal Rights of Children in Cuba.

22. Leonor Rodriquez Lezcano is a Black Cuban woman who is the Secretary of Foreign Relations for the Federation of Cuban Women. She is an elected union representative of her workplace. She graduated in 1974 from the University of Havana where she engaged in research on life in isolated rural villages. She was to speak in the United States on the subject, "Black Women in Cuba."

23. In the summer of 1983, the Institute for Policy Studies invited Ms. Finlay and Ms. Lezcano to visit the United States to speak on women's issues and women in Cuba. IPS undertook to organize a speaking tour for both women to lecture at various church, university, women's and political groups in different parts of the United States.

24. Plaintiffs, and other American individuals and groups, arranged meetings and lectures at which Ms. Finlay and Ms. Lezcano would speak and meet with them to discuss the situation of women and children in Cuba,

the situation of black women in Cuba, Cuban society in general, and issues of mutual concern.

25. Shortly after receiving these invitations, Ms. Finlay and Ms. Lezcano applied to the United States Interests Section in Havana, Cuba for an entry visa. On their applications, they indicated the general purpose of their visit and that they intended to remain in the United States for a brief time only.

26. In the fall of 1983, the applications for visas were officially denied under Section 212 (a) (27) of the Immigration and Nationality Act. 8 U.S.C. § 1182 (a) (27). That section renders ineligible for visas

> [a]liens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest or endanger the welfare, safety, or security of the United States.

27. In response to subsequent letters of inquiry from Holloway, IPS and other invitors, the State Department clarified the basis for its decision by stating that "their visit to the United States would have been prejudicial to the public interest by providing these two officials with forums for propagating Cuban policies before U.S. audiences." The State Department declared that any future applications "will be considered in light of the intended purpose of their visit" noting that "visits which are primarily for sport or cultural purposes are exempted" from the restriction on which it was relying.

28. Ms. Finlay lived in the United States from 1944, when she was four, through 1959. She attended school in New York, first at the Dominican Academy, then at Blessed Sacrament High School. She returned to Cuba in 1961, and has travelled to the United States frequently since that time. At no time during her earlier travels for the purpose of attending conferences and carrying out

speaking engagements in the United States has she been denied a United States visa, or been advised by a consular officer or the State Department or the Attorney General or other government officials that her presence in the United States would be prejudicial to the public interest or that she was otherwise ineligible to receive a visa. At no time during such earlier travels for the purpose of engaging in conferences and carrying out speaking engagements did she engage in any conduct that could properly be regarded as prejudicial to the public interest within the meaning of Section 212 (a) (27), or as violative of any provision of law, including the Immigration and Nationality Act.

29. The defendants do not in fact know or have reason to believe that Ms. Finlay or Ms. Lezcano plan to or would engage in any activities within the United States on their proposed visits that would be prejudicial to the public interest or endanger the welfare, safety or security of the United States or would otherwise be in violation of the Immigration and Nationality Act.

30. Upon information and belief, the defendants denied the women visas because of their political beliefs and associations and the presumed content of their speech in the United States.

31. Upon information and belief, the denial of a visa to the two women is part of a pattern and practice by defendants of denying visas to foreign critics of American policy in Latin America and elsewhere to proponents of the government and social system now existing in Cuba, and more generally to proponents of systems other than ours.

32. Defendants' exclusion of Ms. Finlay and Ms. Lezcano from the United States is not authorized by Section 212 (a) (27), and is not based on legitimate, lawful and bona fide reasons.

33. The invitations IPS and the other invitors have extended to Ms. Finlay and Ms. Lezcano are open and con-

tinuing and the two women have accepted the invitations on a continuing basis, contingent upon the granting of visas.

34. Defendants' actions in this case have caused and continue to threaten irreparable damage to plaintiffs' First Amendment rights to meet and exchange views with foreign critics of United States foreign policies and advocates of differing social systems, and to educate themselves about some of the most critical issues facing America today.

35. Defendants' actions in this case are arbitrary and capricious.

36. Plaintiffs lack any adequate remedy at law.

CAUSES OF ACTION

37. Defendants' actions in this case are not authorized by section 212 (a) (27) of the Immigration and Nationality Act, 8 U.S.C. § 1182 (a) (27), which bars any alien who seeks "to enter the United States solely, principally, or incidentally to engage in *activities* which would be prejudicial to the public interest or endanger the welfare, safety or security of the United States" (emphasis added). It neither contemplates nor permits the exclusion of aliens based on political beliefs or associations or the anticipated content of an alien's political speech in the United States.

38. Defendants' refusal to grant Ms. Finlay and Ms. Lezcano a visa is not based on any knowledge or "reason to believe" that they seek "to engage in activities which would be prejudicial to the public interest or endanger the welfare, safety, or security of the United States." Absent such knowledge or reason to believe, defendants' actions exceed their statutory authority under section 212 (a) (27) of the Immigration and Nationality Act, 8 U.S.C. § 1182 (a) (27).

39. For the reasons recited above, defendants' refusal to grant the two women visas to meet with and speak to

plaintiffs in the United States is arbitrary and capricious in violation of the Administrative Procedure Act, 5 U.S.C. § 706.

40. Insofar as section 212 (a) (27) of the Immigration and Nationality Act, 8 U.S.C. § 1182 (a) (27), is construed to permit the exclusion of aliens on the basis of their political associations or the political speech in which they would engage were they admitted, it constitutes a vague, overbroad and standardless delegation of authority to the Executive branch to curtail political debate in the United States on the basis of content in violation of the First Amendment.

41. Defendants' exclusion of the two women from the United States abridges the right of plaintiffs, as well as others in this country, to meet, discuss and exchange ideas on subjects of vital national interest, in violation of the First Amendment.

42. Defendants' application to this case of section 212 (a) (27) of the Immigration and Nationality Act, 8 U.S.C. § 1182 (a) (27), is part of a pattern and practice of ideological exclusions by the Executive branch which has limited the opportunities for citizens in this country to meet, discuss and exchange ideas with foreigners holding views opposed by the defendants, in violation of the First Amendment.

43. Defendants' application of 8 U.S.C. 1182 (a) (27) to bar certain aliens who seek visas to engage in political speech in the United States, but not to bar those same aliens or persons similarly situated who seek visas for sport, cultural or other non-political purposes, denies plaintiffs the equal protection of the laws and violates the First Amendment.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief against the defendants, their successors and subordinates:

a) A declaration that defendants' refusal to grant Ms. Finlay and Ms. Lezcano entry visas is not authorized by section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27), and violates the free speech guarantee of the First Amendment and the equal protection guarantee of the Fifth Amendment;

b) An order directing defendants to issue Mrs. Finlay and Ms. Lezcano appropriate entry visas so that they may accept the invitations proffered by plaintiffs and other groups in this country who wish to hear their views;

c) An injunction prohibiting defendants from continuing to interpret and apply section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27), in a manner that is inconsistent with the terms and intent of the statute and which violates the guarantees of the First Amendment;

d) Such other and further relief as this Court deems just and proper; and

e) The costs and attorneys' fees incurred in this action.

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DECEMBER 15, 1983

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRUCE CRONIN, 546 State Street, Brooklyn, New York 11217 (212) 852-0656;	)	
JUDITH FREIWIRTH, 54 Foster Road, Belmont, Massachusetts 02178 (617) 484-3925;	)	
ANTHONY PALOMBA, 43 Custer Street, Jamaica Plain, Massachusetts 02130 (617) 552-4737;	)	
MOBILIZATION FOR SURVIVAL, 853 Broadway, New York, New York 10003 (212) 533-0008;	)	
BOSTON MOBILIZATION FOR SURVIVAL, 727 Massachusetts Cambridge, Massachusetts 02139 (617) 354-0008;	)	CIVIL ACTION NO. 83-3895

NEW ENGLAND CAMPAIGN TO STOP THE EUROMISSILES, 2161 Massachusetts Avenue, Cambridge, Massachusetts 02140 (617) 492-6446;	) COMPLAINT) FOR INJUNC-) TIVE AND) DECLAR-) ATORY) RELIEF
Plaintiffs,	))
v.	
GEORGE P. SHULTZ, Secretary of State, Department of State, Washington, D.C. 20520;	))))
WILLIAM FRENCH SMITH, Attorney General, Department of Justice, Washington, D.C. 20530; and	)))))
ALAN C. NELSON, Director of the Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536,	)))))
Defendants.	))

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief challenging defendants' refusal to grant a visa to Nino Pasti, a former member of the Italian Senate, former North Atlantic Treaty Organization (NATO) General, and public critic of the recent placement of Pershing II and Cruise missiles by the United States in Europe. It is brought by interested Americans vitally concerned about United States policies concerning nuclear weapons and nuclear disarmament. To educate themselves further about those issues, and to convince other Americans that current American policy is misguided and dangerous to the continuation of the human species on this planet, plaintiffs either arranged or planned to attend speaking engagements in the United States by Senator Pasti concerning American nuclear weapons policies, which were scheduled to coincide with similar meetings and demonstrations throughout Europe and the United States during the weekend of October 21-24, 1983. The only asserted basis for Senator Pasti's exclusion from the United States is that, in defendants' view, his speech here would be "prejudicial to the public interest". As a result of that determination, the unique and important perspective that Senator Pasti can offer plaintiffs and other American citizens on United States nuclear weapons policy has been barred from this country at the very time when that subject is a matter of intense national debate.

2. The exclusion of Senator Pasti from the United States for ideological reasons is not an isolated event. Rather, the defendants have employed their visa authority to shape and limit political debate within the United States. The purpose and effect of this policy has been to deny Americans the opportunity to hear and meet with significant and respected critics of American policy, and advocates of policies which differ from ours. Such a pattern and practice of ideological exclusions is inconsistent

with the basic premises of a free society. Defendants' actions in this regard violate congressional intent as well as the constitutional guarantees of free speech and assembly embodied in the First Amendment.

JURISDICTION AND VENUE

3. Jurisdiction is properly vested in this Court pursuant to 28 U.S.C. §§ 1331 and 1361 and 8 U.S.C. § 1329, over causes of action arising under 8 U.S.C. § 1182(a)(27), 5 U.S.C. § 702, and the First and Fifth Amendments to the Constitution.

4. The venue of this action lies in this district under the provisions of 28 U.S.C. § 1391(e).

PLAINTIFFS

5. Mobilization for Survival ("Mobilization") is a New York not-for-profit corporation located in New York City which advocates the multilateral abolition of all of nuclear weapons. The Mobilization works with affiliated similar groups throughout the United States by helping them to acquire and schedule speakers like Senator Pasti for public demonstrations, teach-ins, and other meetings. Plaintiff Mobilization has invited Senator Pasti to come to the United States to speak at a series of events, such as the Boston meeting at which defendants prevented him from speaking, concerning the dangers Euromissiles pose to world peace and humanity. Senator Pasti has accepted that invitation, contingent on securing a visa.

6. Bruce Cronin is a citizen of the United States and New York who is disarmament coordinator for plaintiff Mobilization. He planned to attend the October 23 demonstration in Boston and to hear Senator Pasti there, and plans to meet with and hear Senator Pasti when and if he is granted a visa to enter the United States to speak on Euromissiles. Mr. Cronin seeks to have an opportunity to

hear Senator Pasti speak in the United States on the subject of Euromissiles and to have an opportunity to meet with and question him because he believes that his own understanding of this issue and hence his ability to participate in the debate concerning nuclear weapons policies would be enhanced by exposure to Senator Pasti's special knowledge, expertise, and experience as a former NATO General. Mr. Cronin also believes that Senator Pasti's public speech in the United States concerning Euromissiles would, in light of his experience and background, lend a credibility which would enhance the adoption of the nuclear weapons policies Mr. Cronin is working to enact into law.

7. The Boston Mobilization for Survival is an unincorporated association in Cambridge, Massachusetts affiliated with plaintiff Mobilization. The Boston Mobilization is a member of the New England Campaign to Stop the Euromissiles, the coalition which sponsored the October 23, 1983 demonstration in Boston at which Senator Pasti was to speak.

8. Anthony Palomba is a citizen of the United States and Massachusetts who is staff person for Boston Mobilization. He planned large portions of the October 23 demonstration in Boston, and intended to hear Senator Pasti speak. He wishes to meet with Senator Pasti, to exchange information and ideas with him, and to hear him speak. He also believes that his capacity to advance his political goals concerning the abolition of nuclear weapons is impeded by defendants' refusal to permit Senator Pasti to speak publicly to and meet with Americans about current American nuclear weapons policies. He plans to meet with, hear, and sponsor speeches by Senator Pasti when and if he is granted a visa to speak in the United States.

9. The New England Campaign to Stop the Euromissiles is an unincorporated coalition of various citizens groups throughout New England concerned about

United States nuclear weapons policies and active in trying to change them through the political process. The New England Campaign was the principal sponsor and organizer of the Boston October 23 demonstration, and invited Senator Pasti to speak at it.

10. Judith Freiwirth is a citizen of the United States and Massachusetts who staffs plaintiff New England Campaign. She was program coordinator of and planned to attend the October 23 demonstration. She wishes to hear Senator Pasti speak and to exchange information and ideas with him in person. She also believes that her capacity to advance her political goals is impeded by defendants' refusal to permit Senator Pasti, under her sponsorship, to speak publicly to and meet with Americans about current American nuclear weapons policies. She plans to meet with, hear, and sponsor speeches by Senator Pasti when and if he is granted a visa to speak in the United States.

DEFENDANTS

11. George P. Shultz is the Secretary of State of the United States and the executive head of the Department of State. In that capacity and through his agents, he issues non-immigrant visas under 8 U.S.C. § 201(a)(2) and determines ineligibility for receiving such visas under 8 U.S.C. § 1182(a)(27). Defendant Shultz is sued solely in his official capacity.

12. William French Smith is the Attorney General of the United States. In that capacity and through his agents, he exercises the power to bar visitors to the United States, including those who receive visas from the Secretary of State, under 8 U.S.C. § 1182(a)(27) and otherwise. Defendant Smith is sued solely in his official capacity.

13. Alan C. Nelson is the Commissioner of the Immigration and Naturalization Service. In that capacity and through his agents, he exercises the power to bar visitors to

the United States, including those who receive visas from the Secretary of State. Defendant Nelson is sued solely in his official capacity.

STATEMENT OF THE CASE

14. Largely through his service as a General in the Italian Army, and his assignment in that capacity to the staff of NATO for a period of time, Senator Pasti has a longstanding and thorough knowledge concerning nuclear weapons and nuclear weapons polices. From 1963 to 1966, Senator (then General) Pasti was the Italian member of the NATO Military Committee, and in that capacity was stationed in and working in the Pentagon. He has visited the United States frequently since that time. In the summer of 1983, Senator Pasti received the invitations described above to meet in the fall of 1983 with plaintiffs and other Americans from a wide range of backgrounds and to discuss with them and provide them information on American nuclear weapons policies and the disarmament problem in general.

15. For the purpose of accepting those invitations, Senator Pasti applied for a visa in the summer of 1983 to visit the United States temporarily, in late October, for the stated purpose of meeting and speaking with the press and with individuals and groups concerned about the direction of American nuclear weapons policies and the placement of American nuclear weapons in Europe.

16. Plaintiffs had invited Senator Pasti for that period and had scheduled speeches for him on the weekend of October 21, 1983 because that was the date for similar demonstrations and meetings planned throughout the United States and Western Europe. Senator Pasti's speeches to plaintiffs and to those other Americans whom they sought to persuade by his knowledge and expertise would have been of particular importance had they been uttered in the United States during that weekend.

17. In October, 1983, Senator Pasti was notified in Rome that his visa was officially denied under Section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27). That section renders ineligible for visas

> [a]liens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest or endanger the welfare, safety, or security of the United States.

18. The invitations extended to Senator Pasti by plaintiffs and others are open and continuing and Senator Pasti has accepted the invitations on a continuing basis, contingent on the granting of a visa.

19. On information and belief, had Senator Pasti sought a visa to enter the United States for sport, cultural or other non-political purposes, or to support American nuclear weapons policies, his visa would have been granted.

20. The defendants do not in fact know or have reasons to believe that Senator Pasti plans to or would engage in any activities within the United States on his proposed visits that would be prejudicial to the public interest or endanger the welfare, safety or security of the United States or would otherwise be in violation of the Immigration and Nationality Act.

21. Upon information and belief, the defendants denied Senator Pasti a visa because of his political views and the expected content of his speech in the United States.

22. Upon information and belief, the denial of a visa to Senator Pasti is part of a pattern and practice by defendants of denying visas to foreign critics of American foreign poiicies, particularly those critics with special knowledge or credibility.

23. Upon information and belief, the denial of a visa to Senator Pasti is only one aspect of the government's pattern and practice of unlawfully curtailing the information available on foreign affairs to American citizens by a variety of means.

24. Defendants' exclusion of Senator Pasti from the United States is not authorized by Section 212(a)(27), and is not based on legitimate, lawful and bona fide reasons.

25. Defendants' actions in this case have caused and continue to threaten irreparable damage to plaintiffs' First Amendment rights as citizens and voters to meet, converse and inform themselves about some of the most critical issues facing America today.

26. Defendants' actions in this case are arbitrary and capricious.

27. Plaintiffs lack any adequate remedy at law.

CAUSES OF ACTION

28. Defendants' actions in this case are not authorized by section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27), which bars any alien who seeks "to enter the United States solely, principally, or incidentally to engage in *activities* which would be prejudicial to the public interest or endanger the welfare, safety or security of the United States" (emphasis added). It neither contemplates nor permits the exclusion of aliens based on political beliefs or associations or the anticipated content of an alien's political speech in the United States.

29. Defendants' refusal to grant Senator Pasti a visa is not based on any knowledge or "reason to believe" that he seeks "to engage in activities which would be prejudicial to the public interest or endanger the welfare, safety, or security of the United States." Absent such knowledge or reason to believe, defendants' actions exceed their statutory authority under section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27).

30. For the reasons recited above, defendants' refusal to grant Senator Pasti a visa to speak in the United States is arbitrary and capricious in violation of the Administrative Procedure Act, 5 U.S.C. § 706.

31. Insofar as section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27), is construed to permit the exclusion of an alien on the basis of his political associations or the political speech in which he would engage were he admitted, it constitutes a vague, overbroad and standardless delegation of authority to the Executive branch to curtail political debate in the United Staes on the basis of content in violation of the First Amendment.

32. Defendants' exclusion of Senator Pasti from the United States abridges the right of plaintiffs, as well as others in this country, to meet, discuss and exchange ideas on subjects of vital national interest, in violation of the First Amendment.

33. Defendants' application to this case of section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27), is part of a pattern and practice of ideological exclusions by the Executive branch which has limited the opportunities for citizens in this country to meet, discuss and exchange ideas with foreigners holding controversial views, in violation of the First Amendment.

34. Defendants' application of 8 U.S.C. § 1182(a)(27) to bar certain aliens who seek visas to engage in political speech opposing certain United States policies, but not to bar those same aliens or persons similarly situated who seek visas for sport, cultural or other non-political purposes, or who support United States policies, constitutes a content-based discrimination in violation of the First Amendment and denies plaintiffs the equal protection of the laws.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief against the defendants, their successors and subordinates:

a) A declaration that defendants' refusal to grant Senator Pasti an entry visa is not authorized by section 212 (a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27), and violates the free speech guarantees of the First Amendment;

b) An order directing defendants to issue Senator Pasti an appropriate entry visa so that he may accept the invitations proffered by plaintiffs and other groups in this country who wish to hear his views;

c) An injunction prohibiting defendants from continuing to interpret and apply section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27), in a manner that is inconsistent with the terms and intent of the statute and which violates the guarantees of the First Amendment;

d) Such other and further relief as this Court deems just and proper; and

e) The costs and attorneys' fees incurred in this action.

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Dated: December 28, 1983

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-3739

JAMES ABOUREZK, ET AL., PLAINTIFFS,

v.

RONALD WILSON REAGAN, ET AL., DEFENDANTS.

Civil Action No. 83-3741

CITY OF NEW YORK, ET AL., PLAINTIFFS,

v.

GEORGE P. SHULTZ, ET AL., DEFENDANTS.

Civil Action No. 83-3895

BRUCE CRONIN, ET AL., PLAINTIFFS,

v.

GEORGE P. SHULTZ, ET AL., DEFENDANTS.

AFFIDAVIT OF LAWRENCE S. EAGLEBURGER

I, Lawrence S. Eagleburger, depose and say as follows:

1. I am a Foreign Service Officer, with the rank of Career Minister. Since February, 1982, I have been the Under Secretary of State for Political Affairs of the Department of State. Organizationally, the Under Secretary of State for Political Affairs is the third ranking position within the Department of State, immediately following the Secreatary of State and the Deputy Secretary of State. I joined the Foreign Service in 1957 and have held a wide variety of positions, both in the Department of State and abroad. Prior to becoming Under Secretary of

State for Political Affairs I served as Ambassador to Yugoslavia and as Deputy Under Secretary for Management.

2. In my capacity as Under Secretary of State for Political Affairs, I participate in the formulation and conduct of this Nation's foreign policy. I have occasion to advise the Secretary and the Deputy Secretary concerning specific and general foreign policy issues. In this capacity I also have wide latitude in making independent judgments concerning matters that affect the foreign relations of the United States.

3. By virtue of my present position, I am thoroughly familiar with all relevant matters pertaining to the Department's policies regarding the issuance or refusal of nonimmigrant visas (hereinafter, "NIVs") in politically sensitive, that is, foreign relations sensitive, cases. Also, by virtue of my long and varied experience in a wide number of Department policy-making positions, I am familiar with the history of the Department's activities concerning such matters.

4. I have detailed personal knowledge concerning the recent denials of NIVs sought by or on behalf of Interior Minister Borge, former Senator Pasti, and Ms. Finlay and Ms. Lezcano. I also am familiar with the allegations made by plaintiffs in these suits. I offer the following testimony based upon my personal knowledge and information available to me in my official capacity.

5. The overwhelming majority of NIV applications involve only the ordinary circumstances of aliens seeking to visit the United States for reasons of business or pleasure. However, in some instances, the issuance, denial or revocation of a NIV to a particular alien can have significant diplomatic or foreign policy ramifications to the extent that the issuance or denial is construed as an act of the United States Government. Thus, for example, the issuance or denial of a visa to a foreign government official

may be taken by the alien's government as a reflection of United States foreign policy vis-a-vis that government and may result in reciprocal action or retaliation by that government. Similarly, the denial of visas to foreign government officials is one of the tools available to a government to communicate its attitude about the policies of other states.

6. Consular officers are authorized to seek advisory opinions from the Department in adjudicating individual NIV applications. For certain particularly sensitive categories of applications involving internal security or foreign policy considerations, the Department has directed that advisory opinions must be sought before taking action on the application in question. Thus, for example, consular officers must obtain advisory opinions in all cases before denying an application under sections 212(a)(27), (28)(F), or (29) of the Immigration and Nationality Act, or where the application is made by or on behalf of citizens of certain foreign countries such as Cuba, North Korea, and Vietnam.

7. When a consular officer seeks an advisory opinion on a particular NIV application, the nature of the review by the Department will depend upon the applicant and application in question, and the specific interests implicated by the proposed entry. It is clear and unequivocal policy of the Department that NIV applications should be granted unless, in the judgment of senior Department officers, there is reason to believe that approval of the requested entry would be likely to jeopardize significant United States foreign policy interests. Because of this fundamental policy and the fact that the circumstances and considerations pertinent to an alien's proposed travel necessarily may change over time, each application referred to the Department is considered individually and thoroughly before a determination is made.

8. The Department has for many years adhered to the principle that, in appropriate cases, visa applications by aliens may properly be denied for reasons of foreign policy. I have personal knowledge that, in both this and previous Administrations, the Department has construed its responsibility for foreign and diplomatic affairs and authority under the Immigration and Nationality Act as requiring that the Department and its consular officers give due and careful regard to the inextricable relationship between United States foreign policy and the response of our government to aliens seeking to enter the United States. Indeed, in my judgment, it would both ignore history and reality and severely prejudice the Department's ability to fulfill its responsibility to administer the interests of the United States within the international community to suggest that NIV determinations be made without regard to the potential foreign policy consequences thereof.

9. The denial of NIV applications for reasons of foreign policy is extremely rare. Contrary to plaintiffs' suggestion, such denials are not made on the simple basis that the applicant may be critical of United States policy. It is neither the policy nor the purpose of the Department to use visa denials to control or restrict dialogue and debate concerning the policies of the United States or any other member of the world community. I am aware of no instance in which a NIV request has been denied for reasons of foreign policy simply because the applicant was critical of our policies and objectives.

10. There are, however, occasions when, in the judgment of senior Executive officers, a particular NIV application must be denied for reasons of foreign policy. Such determinations are made on a case-by-case basis only after a thorough review of the information available to the Department and the recommendations of those officers responsible for the geographic and policy areas affected by the request under consideration. Such information and

recommendations often include data and analyses from the United States law enforcement and intelligence communities. Depending upon the sensitivitiy of the case, the ultimate determination may be made by either the Secretary of State or myself in the light of Administration foreign policy goals and objectives.

11. With respect to the NIV applications of Interior Minister Borge, former Senator Pasti, and Ms. Finlay and Ms. Lezcano, each case, upon request for advisory opinion by the consular officer concerned, was individually reviewed and considered by senior Department officers in light of current United States foreign policy. (While, as is normally done in such cases, routine name checks were made through United States intelligence agencies, contrary to plaintiffs' allegations, no recommendations were received from the Department of Justice or any of its components in these cases.) The information and deliberations involved in the determinations made on these four applications are highly sensitive, and the pertinent records have been classified in accordance with Executive Order 12356. I have prepared separate classified affidavits explaining the precise circumstances of each of the denial determinations, which, I understand, will be proferred to the Court for possible *in camera* consideration.

12. I personally made the determination made with respect to Interior Minister Borge. Mr. Borge was and remains a senior officer of the Nicaraguan Government. The visa application was submitted by the Nicaraguan Government on behalf of Mr. Borge through a diplomatic note to the American Embassy at Managua. The denial of the application was based upon my considered judgment that the entry of this particular alien for the purpose and during the period specified in the application would have been prejudicial to the conduct of the foreign affairs of the United States.

13. I have reviewed the determination made with respect to former Senator Pasti. In addition to his former positions as a senior officer in the public and military service of the Italian Government, Mr. Pasti was and remains a participant in certain activities of the World Peace Council (WPC), whose relationship to the Soviet Government is detailed in two unclassified Department of State memoranda (copies of which are attached hereto). The denial of Mr. Pasti's application was based upon the judgment of the Assistant Secretary of State for Consular Affairs, whose decision I ratified within twenty-four hours after it was made, that the entry of this particular alien for the purpose and during the period specified in the application would have been prejudicial to the conduct of the foreign affairs of the United States.

14. I have reviewed the determinations made with respect to Ms. Finlay and Ms. Lezcano. Ms. Finlay and Ms. Lezcano were and remain officers of the Federation of Cuban Women, an instrumentality of the Communist Party of Cuba. The visa applications of Ms. Finlay and Ms. Lezcano were submitted by the Cuban Government on their behalf by diplomatic note to the United States Interests Section at Havana. The official, governmental nature of their proposed trip was clearly manifested both by the issuance to the two women of Cuban diplomatic passports and by the submission of their applications through diplomatic channels. The denial of the applications was based on the judgment of the Assistant Secretary of State for Consular Affairs, which I ratified, that the entry of these particular aliens for the purpose and during the period specified in the applications would have been prejudicial to the conduct of the foreign affairs of the United States.

15. In each of these cases, NIVs were denied under 8 U.S.C. 1182(a)(27) for reasons of foreign policy. In my considered judgment, based on my long experience in

senior foreign policy positions within the Department of State, the power to deny aliens admission to the United States for foreign policy reasons, although rarely exercised, is an extremely important aspect of the Executive's ability to conduct the foreign relations of the United States. In this connection, I can certify, based on my personal knowledge, that this important power has never been exercised lightly or for the purpose of restricting access by United States citizens to the ideas and information offered by citizens of other countries.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 28, 1984.

/s/ LAWRENCE S. EAGLEBURGER
Lawrence S. Eagleburger

UNITED STATES DEPARTMENT OF STATE
WASHINGTON, D.C.

Foreign Affairs Note

An informal research study for background information

April 1982

WORLD PEACE COUNCIL: INSTRUMENT OF SOVIET FOREIGN POLICY

The World Peace Council (WPC) was founded in 1949 as the World Committee of Partisans for Peace and first adopted its present title in 1950. It was based in Paris until 1951 when it was expelled for what the French Government termed "fifth column activities." It moved to Prague and then in 1954 to Vienna, where it remained until banned in 1957 by the Austrian Interior Minister for "activities directed against the Austrian state." However, it continued to operate in Vienna under the legal cover of the newly established International Institute for Peace until its move to its present location in Helsinki in 1968. The International Institute for Peace subsequently emerged as a separate Soviet front with strong links to the WPC.

In recent years, the WPC has expanded its activities while trying to broaden its appeal and sound less like a cold war propaganda vehicle. It has sought support in the Third World by posing as an independent body identifying with such causes as opposition to U.S. "aggression" in Vietnam, anticolonialism, and assistance to "liberation movements." In NATO countries, it has exploited fears of nuclear war by stimulating and/or sponsoring antinuclear rallies and advocating Soviet-supported disarmament policies.

The WPC and similar fronts periodically have faced internal problems because their Soviet affiliation cannot

always be reconciled with the desired image of independence and nonalignment. In 1949, following the expulsion of Yugoslavia from the Cominform, the WPC expelled its Yugoslav representatives. Similarly, the Sino-Soviet dispute led to the WPC's ostracism of China, which later became a major critic of all Soviet fronts. Nikita Khrushchev's revelations of Stalinist excesses at the 20th Soviet Communist Party Congress in February 1956 and the suppression of the Hungarian uprising by Soviet troops the following November cost the fronts considerable popular support. After the Soviet-led invasion of Czechoslovakia in August 1968, Moscow, in order to restore discipline, replaced nearly all major Communist-front officials. Although opposition to Soviet control occasionally occurs within the WPC, the leaders are usually able to confine dissent to private meetings of commissions or subcommissions. Dissenting views seldom find their way into the large-scale WPC-sponsored public gatherings. When, for example, Soviet human rights activist Andre Sakharov sent a message in 1976 to a WPC-sponsored forum on disarmament in York, Great Britain, it was not read to delegates as Sakharov had requested. At meetings in 1977, non-Communist participants embarrassed WPC leaders by asking questions about human rights violations in the U.S.S.R., but none of this found its way into the official reports. More recently, the December 1979 Soviet invasion of Afghanistan apparently once again generated dissension within the WPC. Two months elapsed before the WPC issued a statement endorsing the Afghan invasion.

MEMBERSHIP AND ORGANIZATION

The WPC has attracted the support of some prestigious non-Communist figures—literary, humanitarian, scientific, religious, and others—who are motivated by a genuine concern for peace and not dissuaded by the pre-

ponderance of Soviet and pro-Soviet personnel in key WPC leadership and decision-making positions. Total membership information has never been made public. Most of the members, moreover, do not belong to the WPC itself, but to affiliates at the national level. The WPC claims that 135 national "peace committees"—e.g., the U.S. Peace Committee, the Soviet Peace Committee, the Syrian Peace Committee—make up its network of local chapters.

Historically, it has been the function of the fronts to mobilize those elements of society not normally reached by local, Moscow-linked Communist parties—for example, sympathizers not wishing to commit themselves entirely to party discipline and those interested only in particular issues or moved by certain emotional appeals. Lenin saw the potential of international mass organizations as a means to marshal public support for party directives. In the 1930s during the "popular front" period, Willi Munzenberg, a veteran Communist organizer working for the Comintern, spoke cynically of international front organizations as "innocents' clubs."

The WPC is organized into four principal bodies.

—The Council, which meets every 3 years, is the organization's highest authority comprising representatives of cooperating international organizations and national peace committees.

—The Presidential Committee, elected by the Council, is nominally responsible for running the WPC between Council sessions. The Presidential Committee has 26 vice presidents (of which 11 are known to be members of pro-Soviet Communist parties) and 146 members. It holds regular annual and occasional emergency meetings. WPC President Romesh Chandra, a member of the Politburo of India's Moscow-line Communist party, chairs the Committee.

—A Bureau of the Presidential Committee, consisting of the WPC president, vice presidents, and representatives of selected national peace committees, implements decisions and plans future activities and "programs of action." It meets three to four times a year.

—The Secretariat, a full-time executive staff appointed by the Presidential Committee, is responsible for proposing new activities and for implementing Council, Presidential Committee, and Bureau decisions.

FUNDING

The WPC claims to be funded by contributions from national peace committees, donations to its World Peace Fund, and special collections. The evidence, however, strongly suggests that the bulk of its expenses are met by the Soviet Union. In addition, East Germany, Czechoslovakia, Bulgaria, Hungary, Poland, and Cuba provide material and financial support to the WPC, usually in the form of airline service and hotel expenses.[1]

According to the Soviet English-language weekly *Moscow News* (No. 19, 1981), the Soviet Peace Fund helps to finance "some" of the WPC's "large public initiatives."[2] Writing in *20th Century and Peace* (April 1980), Soviet Peace Fund Chairman Boris Polevoi asserted that his clients include "the leaders of the international democratic organizations working for peace: The Fund regularly gives

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[1] In a letter published in the *New Statesman* (October 17, 1980), a correspondent identified as Ruth Tosek, a "former senior interpreter for several of the Moscow-controlled organizations," stated that "all funds of these organizations, in local and in hard currency, are provided above all by the Soviet Union, but also by other East European satellite countries on the basis of set contribution rates, paid by the governments of these countries through various channels."

[2] The Soviet Peace Fund is a nationwide organization with the representatives scattered throughout most of the U.S.S.R.'s cities, towns, and villages. A common method by which money is collected

them assistance in organizing their undertakings." Polevoi also revealed that the Fund works closely with the Soviet Peace Committee, which aims "to render financial aid to the organizations, movements and personalities fighting for stronger peace, national independence and freedom." Referring to the October 1973 World Congress of Peace Forces in Moscow, an event organized jointly by the WPC and the Soviet Peace Committee, the November 1973 issue of the WPC's *Peace Courier* reported that "Soviet public organizations . . . covered all the delegates' maintenance expenses in Moscow. Soviet citizens donated to the Soviet Peace Fund—which covered the delegates' maintenance expenses—about $200,000. Moscow's Patriarchate also donated 3 million rubles."

At a February 9-19, 1981, session of the U.N. Committee of Non-Governmental Organizations, the WPC was forced to withdraw its application for upgrading its consultative status with the U.N. Economic and Social Council (ECOSOC) in the face of adverse criticism from ECOSOC members. WPC President Chandra said in response to questioning that the WPC's accounts were not independently audited but rather were reviewed by the WPC itself. In addition, he reported that the financial statements submitted to ECOSOC represented only a fraction of his organization's actual income and expenditure. Chandra made these statements while avoiding committee questions regarding the source of WPC financial contributions. According to the *ECOSOC Report* (March 16, 1981), ECOSOC members concluded that the WPC "had received large-scale financial support from government sources, and had gone to great lengths to conceal that fact from the committee."

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for the Soviet Peace Fund is for individual factories, plants, and collected farms to hold a 1-day "work shift for peace." According to the Soviet publication 20th Century and Peace (December 1981), the Krasnoyarsk Peace Committee received 2 million rubles in donations for the Soviet Peace Fund in 1981.

EXTENT OF SOVIET CONTROL

In June 1981, at a Kremlin ceremony, Soviet President Leonid Brezhnev presented Chandra, WPC president since 1977, with the Order of Lenin. Citing Chandra's service to the "ideals of peace, his selflessness in the bitter struggle against the forces of militarism and aggression," Brezhnev expressed gratification that the Soviet "peace program" for the 1980s met with "full understanding" from such an "authoritative movement as the movement of peace champions" (*20th Century and Peace*, August 1981). This act symbolizes the importance the Soviets attach to the WPC: The Order of Lenin is one of the most prestigious Soviet awards and is presented personally by Brezhnev only on rare occasions.

Control is exercised over the WPC by the Communist Party of the Soviet Union's (CPSU) Central Committee through its International Department (ID), which is headed by Central Committee Secretary and Politburo candidate member Boris Ponomarev. The ID maintains a special branch, known as the International Social Organizations Sector, which is responsible exclusively for front organizations. The special branch falls under the general responsibility of Vitaliy Shaposhnikov, a deputy ID chief who is at the same time a member of the WPC's Presidential Committee. Georgiy Zhukov, also a member of the WPC's Presidential Committee, is a candidate member of the CPSU Central Committee, a member of the U.S.S.R. Parliamentary Group, a deputy-chairman of the U.S.S.R.-U.S.A. Society, and the chairman of the Soviet Peace Committee—the U.S.S.R.'s national affiliate of the WPC. Through such direct lines to key WPC officials, the CPSU can often control decisions on WPC projects and activities as well as the content of statements, communiques, and resolutions stemming from WPC events.

Since its original "Stockholm Appeal" for "banning the bomb" in 1950, the WPC has consistently advanced Soviet positions on controversial international issues.

For example, in conjunction with other front organizations, it established the "Stockholm Conference on Vietnam," active from 1967-68 until the withdrawal of U.S. troops from Indochina in 1973. It supported the "International Commission of Inquiry into U.S. War Crimes in Vietnam," created in 1970 as a subsidiary of the Stockholm Conference. Throughout the Vietnam war, the WPC sent many "peace" delegations to North Vietnam and regularly issued statements supporting Soviet policy on the war. More recently, in March 1979, the WPC staged an "International Conference on Vietnam" to condemn the Chinese, and in May 1980 it organized a "special conference" in Hanoi to mark the 90th anniversary of the birth of Ho Chi Minh.

The anti-"neutron bomb" campaign initiated by the Soviets in mid-1977 provided the WPC and affiliated fronts with an opportunity to revive ban-the-bomb agitation and to claim that the United States was pursuing military policies which disregarded the interests of its European allies. The WPC proclaimed August 6-13, 1977, a Week of Action against the bomb and organized and helped orchestrate several peace and anti-bomb demonstrations in Europe, Africa, Latin America, and the Near East. President Carter's decision to postpone development of the neutron warhead was then touted as a victory for world "peace forces."

The December 1979 NATO decision to modernize its intermediate-range nuclear forces (INF) in response to the deployment of Soviet SS-20 missiles targeted on Europe now serves the WPC as the focus of a vigorously conducted campaign for "peace, disarmament and detente" designed to influence European public opinion against

NATO's plans. At the same time, the WPC avoids criticizing or even discussing Soviet and Warsaw Pact military deployments. Instead, during the past year, it has promoted Brezhnev's proposals for negotiations, organized "peace" rallies, and issued formal condemnations of NATO defense policies.

Some 200 representatives of 85 organizations from 30 European countries, the United States, and Canada, as well as from 13 international organizations, attended a WPC-organized "International Conference Against the Arms Race" in Stockholm, June 6-8, 1981. Discussions focused on the modernization of medium-range U.S. missiles in Europe, the "neutron bomb," and the consequences of nuclear war; Soviet SS-20 missiles were not mentioned. The conferees proposed sending a delegation to the United States to "report the mood of European public opinion" regarding U.S. nuclear policies; a conference communique also condemned NATO's INF plans.

WPC's Chandra and representatives of a number of other Soviet-controlled international fronts staged a September 12-13, 1981, "International Organizations Meeting" in Prague on "ways of averting nuclear war."

Some 60 participants, representing peace committees from 21 European countries, attended an October 2-4, 1981, "European Peace Committees Meeting" in Kosice, Czechoslovakia. Held under the slogan "For a Europe of Peace and Without Nuclear Arms," the meeting was organized by a WPC affiliate, the Czechoslovak Peace Committee, as a continuation of the June 1981 Stockholm Conference on Disarmament and Military Detente in Europe.

Chandra told a press conference in New Delhi on November 30, 1981, that the WPC was seeking a "winter offensive" in support of the "mass movement for disarmament" in Europe.

The current priority of Soviet diplomacy is to prevent INF modernization in Western Europe, and the WPC is expected to concentrate its efforts on this issue. Nevertheless, in line with its past record, the WPC will seek to operate however Soviet foreign policy interests dictate. As Romesh Chandra put it when speaking in Moscow in 1975: "The Soviet Union invariably supports the peace movement. The World Peace Council in its turn positively reacts to all Soviet initiatives in international affairs."[3]

[3] *New Times*, Moscow, July 1975.

UNITED STATES DEPARTMENT OF STATE
BUREAU OF PUBLIC AFFAIRS
WASHINGTON, D.C.

Special Report No. 101

July 1982

Soviet Active Measure: An Update

This report describes Soviet "active measures" which have come to light since the publication of Special Report No. 88, "Soviet Active Measures: Forgery, Disinformation, Political Operations," in October 1981

The Soviet Union uses the term "active measures" (*aktivnyye meropriyatiya*) to cover a broad range of activities designed to promote Soviet foreign policy goals, including undercutting opponents of the U.S.S.R. Active measures include disinformation, manipulating the media in foreign countries, the use of Communist parties and Communist front groups, and operations to expand Soviet political influence. In contrast to public diplomacy, which all nations practice, Soviet active measures often involve deception and are frequently implemented by clandestine means. Active measures are carried out not only by the KGB but also by the International Department and the International Information Department of the Central Committee of the Communist Party of the Soviet Union.

The active measures discussed in this report are necessarily limited to those that have been publicly exposed. They make clear that these activities take place worldwide. The open societies of many industrialized and developing countries afford the Soviets opportunities to use active measures to influence opinions in favor of

Soviet policies and against those of the United States and its allies. It is our hope that this report will increase public awareness and understanding of Soviet active measures and thereby reduce the likelihood that people will be deceived.

Forgeries

Forgeries are a frequently used active measures technique. Several have come to light in recent months. Their appearance has been timed to influence Western opinion on current sensitive issues. As far as we are aware, only one of these recent forgeries achieved uncritical publication.

Forgeries are usually sent through the mail to journalists, officials, or other persons who might make them available to the media. Forgeries normally do not carry a return address, nor is the sender identified in a way that can be checked. How the document was acquired invariably is vague.

The NATO Information Service Documents. In late October 1981, Spanish journalists living in Brussels received form letters purporting to come from the NATO Information Service. The letters enclosed a publicity packet that had been updated to include Spain as a new member of the alliance. As the Spanish Parliament was still debating Spain's application to join NATO, the letter could impress Spaniards as showing contempt for Spain's democratic institutions. The journalists checked with NATO, and stories in the Spanish press spoke of a forgery designed to influence Spain's domestic debate on NATO.

The President Reagan Letter to the King of Spain. In November 1981, an attempt was made in Madrid to surface a forged letter from President Reagan to the King of Spain. In terms likely to offend Spanish sensitivities, the

letter urged the King to join NATO and to crack down on groups such as the "OPUS DEI pacifists" and the "left-wing opposition."

After an initial mailing to Spanish journalists failed to obtain publication, the forgery was circulated on November 11 to all delegations (except the U.S. and Spanish) to the Conference of Security and Cooperation in Europe (CSCE), then meeting in Madrid. This time several Madrid newspapers ran stories that exposed the letter as a fabrication probably of Soviet origin.

The Clark-Stearns Letter. In January 1982, a forged letter and an accompanying research analysis dated September 23, 1981, from Judge William Clark, then Deputy Secretary of State to the U.S. Ambassador to Greece, Monteagle Stearns, circulated in Athens. This forgery indicated U.S. support for the conservatives in the October Greek elections and alluded to a possible military coup if Socialist leader Andreas Papandreou won at the polls. On the basis of Embassy assurances that the letter was a fake, it was not initially published. Several weeks later, after copies had been circulated at the CSCE in Madrid, the Athens daily *Vrathini* published a story describing the letter as of doubtful authenticity and probably attributable to a "third-country" intelligence service.

The Swedish Mailgrams. During the week of November 8, 1981, at least 10 mailgrams—initiated by telephone calls to Western Union—were circulated to journalists in the Washington, D.C. area. Supposedly sent by U.S. Government officials, the mailgram offered to make available the text of an alleged secret agreement for U.S. use of the Swedish base at Karlskrona for intelligence purposes.

The mailgrams were sent immediately after the furor caused by the grounding of a Soviet submarine in restricted waters off the Karlskrona naval base. Their timing

supports the conclusion that the effort was an attempt to offset the bad publicity the Soviets received from the incident.

The Haig-Luns Letter. The April 22, 1982 edition of the Belgian leftist weekly *De Nieuwe* published a letter supposedly sent in June 1979 by retiring NATO Commander Alexander Haig to NATO Secretary General Joseph Luns. Both NATO and U.S. officials branded the letter a fabrication.

The forged letter discussed a possible nuclear first strike and called for "action of a sensitive nature" to "jolt the faint hearted in Europe" opposed to intermediate-range nuclear force modernization. The timing of the false letter was related to the many antinuclear demonstrations which took place in Europe in the spring of 1982. The letter appeared again in the Luxembourg Communist Party newspaper, *Zeitung*, on May 10.

The Department of Commerce Document. In late May 1982, just before the Versailles economic summit, an alleged U.S. Government document dated February 19 1982 circulated in Brussels. Purporting to be the recommendations of a working group on strategic economic policy chaired by the Secretary of Commerce, the document twisted U.S. policy on sensitive trade issues in a way likely to stimulate friction between the United States and its European allies. Several journalists brought the matter to the attention of U.S. officials, who promptly branded it a forgery. As far as we are aware, the media have not reported the fabricated document.

Media Manipulation/Disinformation

The purpose of disinformation efforts is to gain public acceptance for something that is not true. Since Soviet media lack credibility, the goal is to achieve publication of false news in reputable non-Communist media. Soviet media, such as TASS or Radio Moscow, are then able to cite

credible sources in replaying a story in the hope that it will be picked up by other non-Communist media. Disinformation also is frequently placed in pro-Soviet news outlets outside the Eastern bloc in the hope that it will be replayed by independent media or simply gain acceptance through repetition.

Angola/Zaire/South Africa. One Soviet campaign has been to discredit U.S. policy in southern Africa—in particular, the credibility of U.S. efforts to solve the Namibia problem—by media stories that the United States is trying to oust the Government of Angola. A number of recent examples illustrate this effort.

- On September 15 and 23-24, 1981, the *Portugal Hoje* of Lisbon, a paper close to the Socialist Party, published reports that U.S., Zairian, and South African representatives had met secretly to conspire against the Angolan regime. The source for the story, an Angolan traveling to Lisbon, claimed he had stolen Zairian documents as proof, but he never made the documents available. Both Zaire and the United States denied the allegations. TASS promptly picked up the *Hoje* story, and in turn it was replayed in a number of African papers, including the *Jornal de Angola.*
- On December 22, 1981, *Diario de Lisboa*, a pro-Communist paper, reported that the United States was supporting "2,000 specially trained gunmen" based in Zaire to attack Angola. The State Department denied the story December 24, but TASS nonetheless picked it up. In turn, a number of African papers and radio stations and the Flemish Socialist daily *De Morgen* replayed the allegations on the basis of the TASS account.
- A similar story was carried in the April 17, 1982 Congolese newspaper *Etumba*, which alleged a meeting in 1981 between the United States, South Africa, and others to plot against Angola. The U.S. Embassy in Brazzaville promptly denied the report.

The Seychelles Coup Attempt. A day after the November 25, 1981 attempt by a group of mercenaries to overthrow the Government of the Seychelles, Soviet news reports were implying that the CIA was responsible. In keeping with frequent Soviet practice, these accusations were attributed to unnamed, and therefore unverifiable, "African radio commentaries." Despite a statement by Seychelles President France Albert René on December 2 that this government had no indication of any foreign involvement other than South African, Soviet media continued to accuse the United States. In December, several African newspapers (among them the *Nairobi Nation* and *Lagos Daily Times*, the leading dailies in Kenya and Nigeria, respectively) repeated the story. Soviet media then replayed the allegations, citing the African papers as sources.

The Pakistani Mosquitoes. In the wake of compelling evidence that the Soviets are using chemical weapons in Afghanistan and supplying mycotoxins for use in Laos and Kampuchea, Moscow has launched a disinformation effort focused on Pakistan. The February 2, 1982 *Literaturnaya Gazeta* alleged that the antimalaria program of the Pakistan Malaria Research Center in Lahore was a CIA-financed effort to breed special mosquitoes "which infect their victims with deadly viruses as part of U.S. plans to introduce biological warfare into Afghanistan." In fact, the Pakistan Malaria Research Center has been conducting antimalaria research for 20 years. Much of the funding comes from the U.S. National Institutes of Health and AID through a contract with the University of Maryland. The State Department promptly labeled the Soviet charges "utterly baseless."

The American Center Director Dr. David Nalin told the *Baltimore Sun* on February 9, 1982 that the allegations were a Soviet disinformation effort to counter U.S. "yellow rain" charges. Nonetheless, TASS continued to

carry the false stories, which were replayed not only by regular disinformation outlets, such as Bombay's *Blitz* and the New Delhi *Patriot*, but also by independent newspapers not usually associated with Soviet propaganda, such as the influential *Times of India* and Pakistani daily *Jang*, and the *Muslim News* of Capetown, South Africa.

A Moscow-funded Greek Newspaper? Another way to exert media influence is by secretly subsidizing a newspaper. This may have occurred recently in Greece. In May 1982, the Athens daily *Messimvrini* charged that a new large circulation daily, *To Ethnos*, had begun publication in September 1981 thanks to a secret Soviet subsidy of $1.8 million; *Messimvrini* alleged that covert payments were continuing. The Greek Government has ordered an investigation.

Military Base Hoaxes. A disinformation staple is to float false stores about U.S. military cooperation. Recent examples from Soviet and Communist media have included false stories that the United States has or intends to establish bases on the Honduran island of Amapala, the Colombian island of San Andres, and in the Comoros Islands off the east coast of Africa. Although these have not gained credence, one relating to Pakistan attracted more attention. As a result, the Pakistan Foreign Ministry on December 10, 1981 found it necessary to deny Radio Moscow's assertion that the United States would seek military bases in Pakistan during a visit by Secretary of State Haig. Among other things, the Radio Moscow account falsely asserted that Indian Foreign Minister Rao had claimed in the Indian Parliament that Pakistan had agreed to provide bases for the U.S. Rapid Deployment Force.

Front Groups/Pro-Moscow Communist Parties

Front groups are nominally independent organizations that are controlled by the Soviets, usually through the International Department of the Central Committee of the CPSU.[1] These organizations have long sought to build support for Soviet foreign policy goals. In recent months the main thrust of front activity has been to try to see that the peace movement in Western Europe and the United States is directed solely against U.S. policy and that it avoids any criticism of the Soviet nuclear threat. The 1982 program of the World Peace Council, for example, calls for:

- "Further intensification of actions against the dangers of nuclear war and the deployment of new U.S. weapons of mass destruction in Western Europe. . . ."
- "National events (demonstrations, seminars, colloquia, etc.) with international participation 'against nuclear arms build-up and the deployment of U.S. missiles in Europe; for peace and detente in Europe.' "
- "International meeting of mayors and elected representatives (city councillors, muncipalities, etc.) and of peace forces from European towns and regions where new U.S. nuclear missiles are to be deployed. . . ."[2]

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[1] See Foreign Affairs Note, *The World Peace Council, Instrument of Soviet Foreign Policy*. Department of State, April 1982. Other well-known international fronts are the International Institute for Peace (IIP). The World Federation of Trade Unions (WFTU), the World Federation of Democratic Youth (WFDY), the International Union of Students (IUS), the Women's International Democratic Federation (WIDF), the International Association of Democratic Lawyers (IADL), the World Federation of Scientific Workers (WFSW), the International Organization of Journalists (IOJ), the Christian Peace Conference (CPC), the International Federation of Resistance Fighters (FIR), and the Women's International League for Peace and Freedom (WILPF).

[2] *World Peace Council: Programme of Action 1982* published by the Information Center of the WPC, Helsinki.

Communist parties linked with Moscow have pursued the same path. The impact of the fronts and local Communist groups varies markedly from country to country and is difficult to evaluate. Nevertheless, awareness is increasing that the Communists and their supporters are attempting to channel the peace and antinuclear movements to serve Moscow's purpose. This has led to friction within the movement in some countries.

In West Germany, after efforts by the German Communist Party (DKP) in early April 1982 produced anti-U.S. slogans without mentioning the Soviet nuclear arsenal as a threat to peace, Petra Kelly, a prominent leader of the Environment Party (the "Greens") publicly criticized the Communists. She repeated this criticism when interviewed on CBS Television during President Reagan's visit to Bonn. Similarly, in Austria, the original platform adopted by the organizers of a peace march on May 15 under pressure from pro-Moscow Communists avoided criticism of Soviet atomic weapons. The non-Communists later regrouped; as a result, the Austrian Youth Council issued a less one-sided platform.

Political Influence Operations

Political influence operations, especially those using agents of influence, are harder to detect than other active measures. In these operations, individuals disguise their KGB connection while taking an active role in public affairs. Exposure, when it occurs, is frequently the result of an espionage investigation. The scale of improper Soviet activities is reflected in the publicized expulsion of 19 Soviet officials involved in espionage and active measures cases from 10 countries during the first 5 months of 1982. Among these were the expulsion of the Soviet military attache from Washington and the uncovering of spy nets in Indonesia and Singapore.

Denmark. In October 1981, the Danish Government expelled Vladimir Merkulov, a KGB officer serving as a second secretary of the Soviet Embassy, for improper conduct, including directing the activities of Danish agent-of-influence Arne Herloev Petersen. An April 17, 1982 Danish Ministry of Justice statement detailed Petersen's work with the KGB.

- In the summer of 1981, the Soviets arranged to cover Petersen's expenses for a series of advertisements in which Danish artists expressed support for a Nordic nuclear-weapons-free zone.
- Petersen brought foreign policy documents provided by the Soviet Embassy to the North Korean Embassy; on Soviet instructions he misrepresented the documents as coming from an American journalist.
- Petersen provided information several times to the Soviet Embassy on the Danish "left wing" and on "progressive" journalists who were not Communist Party members.
- Petersen arranged for the printing of a pamphlet attacking British Prime Minister Thatcher. The text was supplied by the Soviet Embassy.

The Ministry of Justice noted that clandestine meetings between Petersen and a succession of three Soviet "diplomats" (of whom Merkulov was the latest) had extended over several years. Petersen specifically was requested by his KGB handlers not to join the Danish Communist Party.

The Danish Government decided not to prosecute Petersen, although it declared that he violated Danish law. In a television interview 2 days after the official statement, the Danish Foreign Minister challenged Petersen to sue for slander so that the full extent of the government's evidence could be made public.

Sweden. Soviet Third Secretary Albert Liepa was expelled in April 1982. According to a Swedish Foreign Ministry spokesman, Liepa had made systematic efforts to collect information on and exert influence over the Latvian exile community in Sweden. Before his assignment to Stockholm, Liepa had been chairman of a committee based in Riga concerned with maintaining "cultural ties" with Latvians living outside the Soviet Union. ■

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-3739

JAMES ABOUREZK, ET AL., PLAINTIFFS,

v.

RONALD WILSON REAGAN, ET AL., DEFENDANTS.

Civil Action No. 83-3741

CITY OF NEW YORK, ET AL., PLAINTIFFS,

v.

GEORGE P. SHULTZ, ET AL., DEFENDANTS.

Civil Action No. 83-3895

BRUCE CRONIN, ET AL., PLAINTIFFS,

v.

GEORGE P. SHULTZ, ET AL., DEFENDANTS.

AFFIDAVIT OF LOUIS P. GOELZ

I, Louis P. Goelz, depose and say as follows:

1. I am the Deputy Assistant Secretary of State for Visa Services within the Bureau of Consular Affairs of the Department of State. As such, I occupy the position formerly designated as Director of the Visa Office of the Bureau of Consular Affairs. I am a Foreign Service Officer with the rank of Minister Counsellor. I joined the Foreign Service in 1955. During my career, I have served at a variety of Foreign Service posts, including Lima, Hong Kong, Belem, Mexico City, Tehran, and Seoul. In

Tehran and Seoul I served as Consul General and Counsellor of Embassy for Consular Affairs. I have served in my present position since September 1981.

2. In my capacity as Deputy Assistant Secretary for Visa Services, I have day-to-day responsibility for the policy and administration of the issuance of immigrant and nonimmigrant visas by consular officers stationed throughout the world, as well as for the Department's response to queries and requests by such officers for information and advisory opinions necessary to their adjudication of applications by aliens for immigrant and nonimmigrant visas.

3. I have personal knowledge concerning the recent denials of nonimmigrant visas sought by or on behalf of Interior Minister Borge, former Senator Pasti, and Ms. Finlay and Ms. Lezcano. I also am familiar with the allegations made by plaintiffs in these suits. I offer the following testimony based upon my personal knowledge and information available to me in my official capacity.

4. Under the Immigration and Nationality Act of 1952, as amended, (hereinafter, the "Act") responsibility for regulating the entry of aliens into the United States is charged to the Secretary of State, the Attorney General, and consular officers of the United States. While consular officers are responsible for the issuance or refusal of visas, the Act reserves to the Attorney General authority to deny entry to a visaed alien, and to the Secretary of State authority to revoke visas, as well as general responsibility for administration and enforcement of the laws relating to the duties and functions of consular officers. The latter is particularly significant in light of the important role of consular officers in implementing and effecting United States policy throughout the world.

5. Within the Department of State (hereinafter, the Department), the Act establishes a Bureau of Consular Affairs (headed by an Assistant Secretary of State for

Consular Affairs), and a Visa Office (headed by a Director, the position I now hold as Deputy Assistant Secretary for Visa Services). By delegation of authority, the Assistant Secretary and Director act as the Secretary's agents in executing the latter's responsibilities under the Act and for the duties and functions of consular officers.

6. Under the Act, consular officers are authorized to issue or refuse immigrant and nonimmigrant visas sought by foreign nationals. Nonimmigrant visas (hereinafter, NIVs) are sought by aliens seeking to enter the United States for a temporary period for one or more of the purposes specified in section 101(a)(15) of the Act. Under section 221(a) and (g) of the Act, a consular officer may issue a NIV to an alien who has made a proper application, but is prohibited from doing so if the officer knows or has reason to believe that the alien-applicant is ineligible for the visa under the Act or any other provision of law. Section 212(a) of the Act establishes thirty-three separate categories of aliens to whom consular officer may not issue visas, and each alien-applicant must demonstrate to the consular officer his or her individual eligibility for the particular visa requested.

7. In accordance with the Act, the procedures governing consular officers' response to applications for NIVs are set forth in the Department regulations (appearing at 22 CFR Part 41) and internal guidelines (appearing in Volume 9 of the Department's Foreign Affairs Manual). Under these regulations and guidelines, an alien applying for a NIV must appear before the appropriate consular officer and submit to the officer a properly completed and executed application (Form OF-156), a valid passport, and such supporting documentation as the consular officer may deem appropriate. (The requirement for personal appearance before a consular officer may be waived by the consular officer, as a matter of discretion, in certain circumstances; e.g., where, as was the case with Borge,

Finlay, and Lezcano, the alien's visa application is submitted by diplomatic note from the foreign government.) The requirement for completion of the Form OF-156 may also be waived in certain more limited circumstances.

8. In determining whether to issue a NIV, the consular officer considers the information provided to him by the applicant and such information as may otherwise be available through the Department of State. For example, the officer routinely determines what information may be available concerning any previous visa applications the alien-applicant may have made. After careful consideration of such information, the consular officer may determine to (a) issue the visa, (b) seek further information from the applicant, (c) refuse the visa, or (d) seek an advisory opinion from the Department of State to obtain guidance as to the appropriate interpretation of law or application of the law to the particular facts and circumstances presented by the application under consideration.

9. By regulation, no visa application may be refused without further review by a senior officer at the consular office in question. Such reviewing officer may concur in the initial refusal, assume direct responsibility for the matter, or seek an advisory opinion from the Department. It is the clear and unequivocal policy of the Department that no proper NIV application shall be refused unless in the judgment of the consular officer upon the facts and circumstances known to him the alien is ineligible under applicable law to receive the visa. Each alien applying for a NIV may be given an opportunity to present additional information to "cure" any defects or deficiencies in his or her application. Moreover, there is not limit to the number of frequency of NIV applications an alien may submit to a consular officers, and each application and supporting documentation is given the same careful and conscientious consideration by the consular officer. The denial of a NIV

application is simply the judgment of the consular officer that on the available facts and circumstances the alien has failed to demonstrate eligibility for the particular visa requested, and in no way represents a permanent bar to the possible approval of a future application by the same alien.

10. Because of the sensitivity of certain categories of NIV applications, the Department has directed that consular officers seek advisory opinions in all such cases before making a decision. Such categories, identified both by categories of potential ineligibility under the Immigration and Nationality Act and (in limited cases) the nationality of the applicant, generally involve applications for which there are likely to be involved significant considerations concerning the security or foreign policy interests of the United States. For example, the Foreign Affairs Manual instructs consular officers to seek an advisory opinion in all cases where the officer has reason to believe that the applicant may be ineligible or previously may have been refused a visa under sections 212(a)(27), (28)(F), and (29) of the Act.

11. Section 212(a)(27) of the Act prohibits the issuance of a NIV to an alien who the consular officer "knows or has reason to believe seek[s] to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest or endanger the welfare, safety, or security of the United States." Because the judgment on such sensitive and important matters necessarily involves considerations within the respective responsibilities of the Secretary of State and the Attorney General, as well as the need to ensure a uniform interpretation and application of the statutory provisions, under no circumstances may a visa be denied under section 212(a)(27) without careful consideration by

policy-level officers of the Department. At the Department's direction, all such cases must be referred to the Department for an advisory opinion.

12. For many years (indeed, to the best of my knowledge, since enactment of the Immigration and Nationality Act), the Department consistently has interpreted the language of section 212(a)(27) as applying to two distinct classes of cases: to aliens whose entry and proposed activity are deemed to pose a threat to the internal security of the United States, and to those aliens whose entry and proposed activity are deemed to threaten the security and foreign policy interests of the United States within the world community. I personally am aware that, in this and previous Administrations, NIV applications on occasion have been denied under section 212(a)(27) both for reasons of internal security and for reasons of foreign policy.

13. Whenever a consular officer seeks the Department's advisory opinion concerning possible ineligibility under section 212(a)(27), the case first is reviewed by the operational staff of the Visa Office. If the case appears to involve internal security considerations, appropriate coordination is made with United States law enforcement agencies. If, on the other hand, the case appears to involve foreign policy considerations, a special Departmental review procedure is initiated. In either instance, it is likely that liaison and coordination will be made with appropriate United States intelligence agencies. Because of the importance and sensitivity of such matters, much of the deliberations and records pertaining to section 212(a)(27) matters is classified in accordance with Executive Order 12356.

14. All potential section 212(a)(27) cases referred to the Department are given thorough, individual consideration by the staff and officers responsible for the particular interests of the United States implicated by the request in question. No visa denial for reasons of foreign policy is

authorized without case-specific review and approval by senior officers responsible for formulating and administering the Nation's foreign policy. In all such cases, denials may be authorized only by the Assistant Secretary of State for Consular Affairs or a superior officer. In appropriate cases the determination may be made by the Secretary himself or his immediate designee (such as Under Secretary Eagleburger). The determination is then communicated to the consular officer requesting the advisory opinion.

15. Because of the Department's very strict internal review procedures, the number of visa applications denied under section 212(a)(27)—either for reasons of internal security or for reasons of foreign policy—is extremely small. During the twenty-year period the Department has maintained such statistics, only 519 NIV applications have been denied under section 212(a)(27), while consular officers during the same period have issued almost 70 million NIVs. Indeed, for each of the last three years there have been on average less than thirty NIV applications denied under section 212(a)(27), as against the annual issuance of 6 to 7 million nonimmigrant visas. (It should be noted, moreover, that, because NIV determinations are made on an application-by-application basis on the facts available and deemed pertinent at the time of the application, and because any alien, regardless of nationality and circumstances, may apply for a NIV at any time, such variations as do exist in the annual statistics cannot accurately be said to reflect changes in Department policy.) Contrary to plaintiffs' allegations, I am aware of *no* case in which section 212(a)(27) was invoked simply because the applicant was critical of American policy.

16. I have reviewed the circumstances and records pertinent to each of the recent denials of NIV applications made by or on behalf of Interior Minister Borge, former Senator Pasti, and Ms. Finlay and Ms. Lezcano. Each

such application was carefully and thoroughly reviewed within the Department in the manner explained above. As explained by Under Secretary Eagleburger, each application was denied upon determination by senior Department officers that approval of the particular application in question would be prejudicial to the conduct of the foreign affairs of the United States.

17. Tomas Borge Martinez, born August 13, 1930, at Matagalpa, Nicaragua, is Minister of the Interior of Nicaragua and a member of the National Directorate of the Frente Sandinista de Liberacion Nacional (FSLN, the Sandinista Front for National Liberation). On November 21, 1983, the consular officer at Managua, Nicaragua, reported that, by diplomatic note from the Nicaraguan Government, Borge had applied for a visa for the purpose of travelling to the United States for five days, desired to travel as soon as possible, and intended to visit Washington, New York, Boston, and Chicago, and that the responsible consular officer sought the Department's advisory opinion concerning Borge's eligibility to receive a visa for the purpose stated. On November 29, 1983, the Department informed the consular officer at Managua that it was of the opinion that Borge was ineligible to receive a visa under section 212(a)(27) of the Act on the ground that his proposed entry and activities in the United States would conflict with United States foreign policy interests and would be prejudicial to the public interest. On or about November 29, 1983, both the American Ambassador and the responsible consular officer in Managua informed the government of Nicaragua that Borge's visa application was denied pursuant to section 212(a)(27) of the Act. Borge's passport was thereupon returned to the government of Nicaragua.

18. Nino Pasti was born April 18, 1909, at Bologna, Italy. In addition to being a retired Italian Army General and former member of the Italian Senate, he is also an

active participant in the activities of the World Peace Council (WPC), an instrumentality of the Soviet Government. On September 28, 1983, he applied at the Embassy at Rome, Italy, for a nonimmigrant visitor visa. He stated that he has been invited to participate in a speaking tour around the United States between October 18 and 25, 1983. The consular officer who considered Pasti's application found that Pasti was ineligible to receive a visa under section 212(a)(28), INA, 8 U.S.C. 1182(a)(28), on the ground that his election to the Italian Senate in 1975 and 1979 as a member of the list of candidates of the Communist Party of Italy (PCI) constituted an affiliation with a communist party within the meaning of that section of law. On October 3, 1983, the consular officer at Rome reported to the Department by telegram the facts recited above, sought the Department's advisory opinion on Mr. Pasti's ineligibility and asked the Department to consider whether a waiver of Pasti's ineligibility should be recommended to permit his temporary entry notwithstanding his ineligibility. After careful consideration of the information reported by the consular officer at Rome, together with other information relating to Pasti, in light of existing policy guidelines, the Department informed the Embassy on or about October 17, 1983, that, in its opinion, Pasti was ineligible to receive a visa under section 212(a)(27) INA, 8 U.S.C. 1182(a)(27) on the ground that his proposed activities would be prejudicial to the public interest for foreign policy reasons. On or about October 18, 1983, Pasti was informed that his application was denied on that basis. His passport was returned to him.

19(a). Olga Finlay Saavedra, born September 13, 1939, at Havana, Cuba, is a lawyer and a member of the National Committee of the Federation of Cuban Women. She is also an official of the Cuban Communist Party and is the Cuban Representative to the U.N. Commission on the Status of Women. Maria Leonor Rodriguez Lezcano,

born February 22, 1947, at Havana, Cuba, is an official of the Federation of Cuban Women. The Federation of Cuban Women is a mass organization affiliated with and controlled by the Communist Party of Cuba.

(b) On September 22, 1983, the consular officer at the U.S. Interests Section (USINT) at Havana reported that both women had applied for nonimmigrant visitor for business visas (visa symbol B-1). (Use of the term "Interests Section", instead of "Embassy," "Consulate General," or "Consulate," reflects the fact that the United States and Cuba do not maintain full diplomatic relations.) The consular officer also reported that the visa applications were conveyed to USINT by diplomatic note from the Government of Cuba on September 21, 1983, and that both women were the bearers of Cuban diplomatic passports.

(c) Both women intended to enter the United States on or about October 16, 1983, for a period of thirty days to participate in "The Third World Women's Project sponsored by the Institute for Policy Studies." This participation was stated to include speeches on women's issues to church and university groups.

(d) After careful consideration of the information reported by USINT, Havana, in light of existing policy guidelines, the Department informed the consular officer that, in its opinion, the two women were ineligible to receive visas under section 212(a)(27) on the ground that their proposed activities would be prejudicial to the public interest for foreign policy reasons. USINT, Havana, informed the government of Cuba by diplomatic note on October 8, 1983 that the visa applications had been denied under section 212(a)(27). The passports of the two women were then returned to the government of Cuba.

20. As explained above, all determinations on NIV applications—whether or not such determinations involve an advisory opinion by the Department—are made on an

application-by-application basis. Both Finlay and Pasti have previously received NIVs and travelled to the United States. Both have submitted NIV applications which were approved but failed to travel. Finlay applied for and received an NIV and travelled to the United States in December 1983, after the denial complained of. The purpose of her trip on that occasion was, however, altogether different and was not in conflict with United States foreign policy interests. An application earlier in 1983 in behalf of Interior Minister Borge was approved but he apparently elected not to travel to the United States at that time. The Department has no record that Lezcano had previously applied for an NIV. Each of the four aliens remains free to submit a further NIV application; however, to the best of my knowledge, no visa application by any of the four aliens is currently pending adjudication.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 28, 1984.

/s/ LOUIS P. GOELZ

Louis P. Goelz

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-3739

JAMES ABOUREZK, ET AL., PLAINTIFFS,

v.

RONALD WILSON REAGAN, ET AL., DEFENDANTS.

Civil Action No. 83-3741

CITY OF NEW YORK, ET AL., PLAINTIFFS,

v.

GEORGE P. SHULTZ, ET AL., DEFENDANTS.

Civil Action No. 83-3895

BRUCE CRONIN, ET AL., PLAINTIFFS,

v.

GEORGE P. SHULTZ, ET AL., DEFENDANTS.

DECLARATION OF TOMAS BORGE

I, Tomas Borge, declare as follows:

1. I am a citizen of Nicaragua, and the Interior Minister of that nation.

2. I have never travelled to the United States.

3. In 1982, I was invited to the United States to speak by a number of universities (including Johns Hopkins and Harvard) on my country's political, economic, and social affairs, the state of our relations with the United States, and political events in Central American [sic] generally. I very much wanted to accept those invitations, and applied for the visa, but my application was denied.

4. In August 1983, I received a request from Ambassador Quainton, United States ambassador to Nicaragua, to speak with him. He informed me that the United States had decided to give me a visa at any time I desired one. I was eager to travel to the United States, to meet with those who had previously invited me, although prior plans first took me to Europe to meet with leaders of various nations. On my return to Nicaragua, I recontacted the 14 universities which had invited me, and numerous individuals who had sought to discuss the situation in Central America, including some of the plaintiffs. Based on the prospect of numerous speeches and meetings in the United States with members of Congress, opinion leaders, and important groups, I sent my passport to the United States embassy.

5. One day before I was to leave for the United States, after we had spent substantial sums on planning our itinerary, travel arrangements, and security arrangements, I was advised that the United States government had denied the visa request.

6. The purpose of my trip was solely to engage in the above-mentioned discussions and public speaking concerning the prospects for peace in Central America. I had no intention of engaging in any activities during my trip which would have been prejudicial to the United States public interest, dangerous to the welfare, safety, or security of the United States, or violative of any United States laws.

7. I am interested in fulfilling the speaking engagements and meetings which, but for the denial of my visa, I would have undertaken, and plan—subject to getting a visa—to fulfill them.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ TOMAS BORGE
Tomas Borge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-3739

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Civil Action No. 83-3895

BRUCE CRONIN, ET AL., PLAINTIFFS,

v.

GEORGE P. SHULTZ, ET AL., DEFENDANTS.

DECLARATION OF OLGA FINLAY

1. I am a citizen of Cuba, and an attorney.

2. I am a member of the Federation of Cuban Women ("FMC"), and since 1980 have represented the FMC at meetings of international organizations.

3. I am the author of "Cuban Women 1975-1979," "The Rights of Children in Cuba" in *Children of Cuba: Twenty Years,* and a monograph on the legal rights of children in Cuba. I collaborated with C. Wright Mills on his book concerning the Cuban Revolution, *Listen Yankee.*

4. In 1979, I served as Secretary of the Cuban Committee established as part of UNICEF's International Year of the Child. In 1980, 1982, and 1984, I was the Cuban representative to the United Nations Commission on the Status of Women.

5. I lived in the United States from the age of 11, in 1951, to 1961. I attended school in New York City first at Blessed Sacrament, and have travelled to the United States many times subsequently. I have never been arrested in the United States, or elsewhere, and have never violated the terms of a United States visa.

6. I was invited to travel privately to the United States in the fall of 1983 to speak on women's issues by the New York City Commission on the Status of Women and by a number of church and university groups. The trip to the United States which I planned on taking to fulfill these invitations, which I had accepted, involved solely discussions and speeches concerning women's issues and the role of women and children in Cuba today. (I was not travelling to the United States to engage in any activities that could be considered prejudicial to the public interest of the United States or that could endanger its welfare, safety, or to violate any United States law.) In my experience, the give-and-take of face-to-face discussion and argument can be more effective than the mere passive reading of written materials, or even telephonic conversation, can be. Accordingly, I have attended numerous international meetings, conferences, and the like. The United States is the only nation which has ever precluded my entry.

7. I was not travelling as a member of the Cuban government or as a member of the FMC, or on official Cuban government business. To the contrary, I was undertaking this trip solely in a private capacity, although the Cuban government had facilitated the trip by conveying my visa application to the United States interests section. My visa application was not submitted with a

diplomatic passport, but rather with an official passport. This passport is not diplomatic, and is used by many non-diplomats, such as artists, etc. The letter transmitting my visa application, reciting that Leonor Lezcano and I were invited by the Third World Women's Project (of the Institute for Policy Studies) and that our requested thirty-day trip was for the purpose of travelling to speak with university and church groups on women's issues, is attached hereto.

8. The FMC is not an instrumentality of the Cuban government or the Cuban Communist Party. It is not controlled by that Party. Indeed, many of FMC members—including myself—are not members of the Party. The FMC is a non-governmental voluntary organization of over 2,000,000 members, supported solely by their direct contributions of 25 cents a month, which works for the equality of women in employment and other fields.

9. I was personally informed in early October, 1983—*not* through the Cuban government—that my visa was denied.

10. I was given a limited visa in December, 1983, to enable me to attend a meeting of the Pan American Health Organization, a United Nations related body, which was meeting in Washington. Based on instructions I had received, however, I believed that I could engage in no other activity while in the United States other than attendance at that meeting.

11. Because of those instructions, I limited my activities accordingly. For example, although I was invited to speak one evening to individuals associated with the Institute for Policy Studies, I declined, believing, and having been so advised by an American immigration attorney, Michael Maggio, Esq., that the limitations on my visa precluded any such contact.

12. I am interested in fulfilling the speaking engagements and meetings which, but for the denial of my visa, I would have undertaken, and plan—subject to getting a visa—to fulfill them.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 19, 1984.

/s/ OLGA FINLAY

Olga Finlay

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-3739

JAMES ABOUREZK, ET AL., PLAINTIFFS,

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Civil Action No. 83-3741

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GEORGE P. SHULTZ, ET AL., DEFENDANTS.

Civil Action No. 83-3895

BRUCE CRONIN, ET AL., PLAINTIFFS,

v.

GEORGE P. SHULTZ, ET AL., DEFENDANTS.

DECLARATION OF LEONOR RODRIQUEZ LEZCANO

1. I am a citizen of Cuba.

2. I am a member of the Federation of Cuban Women ("FMC") and serve in the office of the Secretary of Foreign Relations of that organization.

3. I am a 1974 graduate of the University of Havana, and have done research on life in isolated rural Cuban villages.

4. I was invited to speak in the United States to the New York City Commission on the Status of Women, and to various chuch and university groups, in the fall of 1983,

on "Black Women in Cuba," a subject with which I am extremely knowledgeable.

5. I have been to the United States on one prior occasion.

6. In 1979 I travelled to New York City to attempt [sic] a meeting at the United Nations. My application for a visa in the fall of 1983 was denied by the United States government. Contingent on securing such a visa, I intend to fulfill the speaking engagements to the plaintiffs in this action which I have been precluded from keeping.

7. My trip to the United States was to have been undertaken in a private capacity. I was not invited as, and would not have spoken as, a member of the Cuban government, an official of the FMC, or on official Cuban government business. Indeed, I am in no sense an official of that organization. My visa application was not submitted with a diplomatic passport, but rather with an official passport. This passport is not diplomatic, and is used by many non-diplomats, such as artists, etc. The letter transmitting my visa application, reciting that Olga Finlay and I were invited by the Third World Women's Project (of the Institute for Policy Studies) and that our requested thirty-day trip was for the purpose of travelling to speak with university and church groups on women's issues, is attached to the Declaration of Olga Finlay.

8. The FMC is not an instrumentality of the Cuban government or the Cuban Communist Party. It is not controlled by that Party. Indeed, many of FMC members—including myself—are not members of the Party. The FMC is a non-governmental voluntary organization of over 2,000,000 members, supported solely by their direct contributions of 25 cents a month, which works for the equality of women in employment and other fields.

9. The trip which I have been precluded from taking would not have involved any activities which could be considered prejudicial to the public interest of the United

States or that could endanger its welfare, safety, or security, or which would have violated any United States law. To the contrary, the only purpose of the trip was to engage in private and public face-to-face discussion concerning the role and position of Black women in Cuban society, and generally on social, economic, and legal issues of mutual concern to women both in Cuba and the United States.

10. I am interested in fulfilling the speaking engagements and meetings which, but for the denial of my visa, I would have undertaken, and plan—subject to getting a visa—to fulfill them.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed on April ____, 1984.

/s/ LEONOR RODRIQUEZ LEZCANO
Leonor Rodriquez Lezcano

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 83-3741

CITY OF NEW YORK, ET AL., PLAINTIFFS,

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GEORGE P. SHULTZ, ET AL., DEFENDANTS.

Civil Action No. 83-3895

BRUCE CRONIN, ET AL., PLAINTIFFS,

v.

GEORGE P. SHULTZ, ET AL., DEFENDANTS.

DECLARATION OF NINO PASTI

I, Nino Pasti, declare as follows:

1. I am a citizen of Italy, presently working as a journalist. I edit the monthly magazine "Lotta per la Pace e il Disarmo" (Struggle for Peace and Disarmanent) and am President of the related organization, "Lotte per la Pace."

2. Most of my career was spent in the Italian Air Force, in which I reached the highest rank, four star General of the Air Force. In that capacity, I served as the Italian Military Representative to the NATO Military Committee, 1963-66, and as Vice-Supreme Allied Com-

mander in Europe for Nuclear Affairs, 1966-68. I retired in April, 1969, having reached 60, the age of mandatory retirement.

3. While I served as the Italian representative to the NATO Military Committee, I was stationed in and worked in the Pentagon in Washington, D.C. My responsibilities included work on the entire range of NATO military issues; I was essentially the "foreign military minister" of the Italian General Staff to the Military Committee and I worked often in contact with the United States Department of Defense.

4. During that three-year stay in the United States, and during subsequent visits to the United States in 1979 and 1981, I was never arrested and never broke any laws. Indeed, I have never been arrested in Italy or any other place in the world.

5. In 1976, I was elected as a Senator to the Italian legislature as a left independent, a list supported by but entirely separate from the Italian Communist Party. I was reelected in 1979 on the same list. I am not, and never have been, a member of the Communist Party, or indeed of *any* political party. I ran during the 1983 election on a local list, and was not elected.

6. Attached hereto and incorporated herein are five copies of previous visas issued by the United States government. The visa dated 13 November 1979 was for the purpose of a "UN Meeting and Tourism," although in the event I did not make that trip. The visa dated 12 April 1981 was to attend a S.A.N.E. (anti-nuclear weapons) meeting in Washington, D.C. A third visa was issued on 26 May 1982, but was quickly cancelled and replaced with a visa dated 8 June 1982, which imposed severe and, in my case, unprecedented restrictions on my travel to the United States, a copy of which is also attached hereto and incorporated herein. Because of those restrictions, I refused to travel to the United States at that time.

7. I was invited to the United States during the summer of 1983, initially by Mr. Pat Tobin, Vice President of the International Longshoremen's and Warehousemen's Union Local No. 10, in San Francisco, and by Mr. Michael Meyerson, Executive Director of the United States Peace Council, in New York, and shortly thereafter by a number of other groups, including the New England Campaign to Stop the Euromissiles, which (with associated groups, including the Boston Mobilization for Survival) invited me to speak in Boston on October 23, 1983.

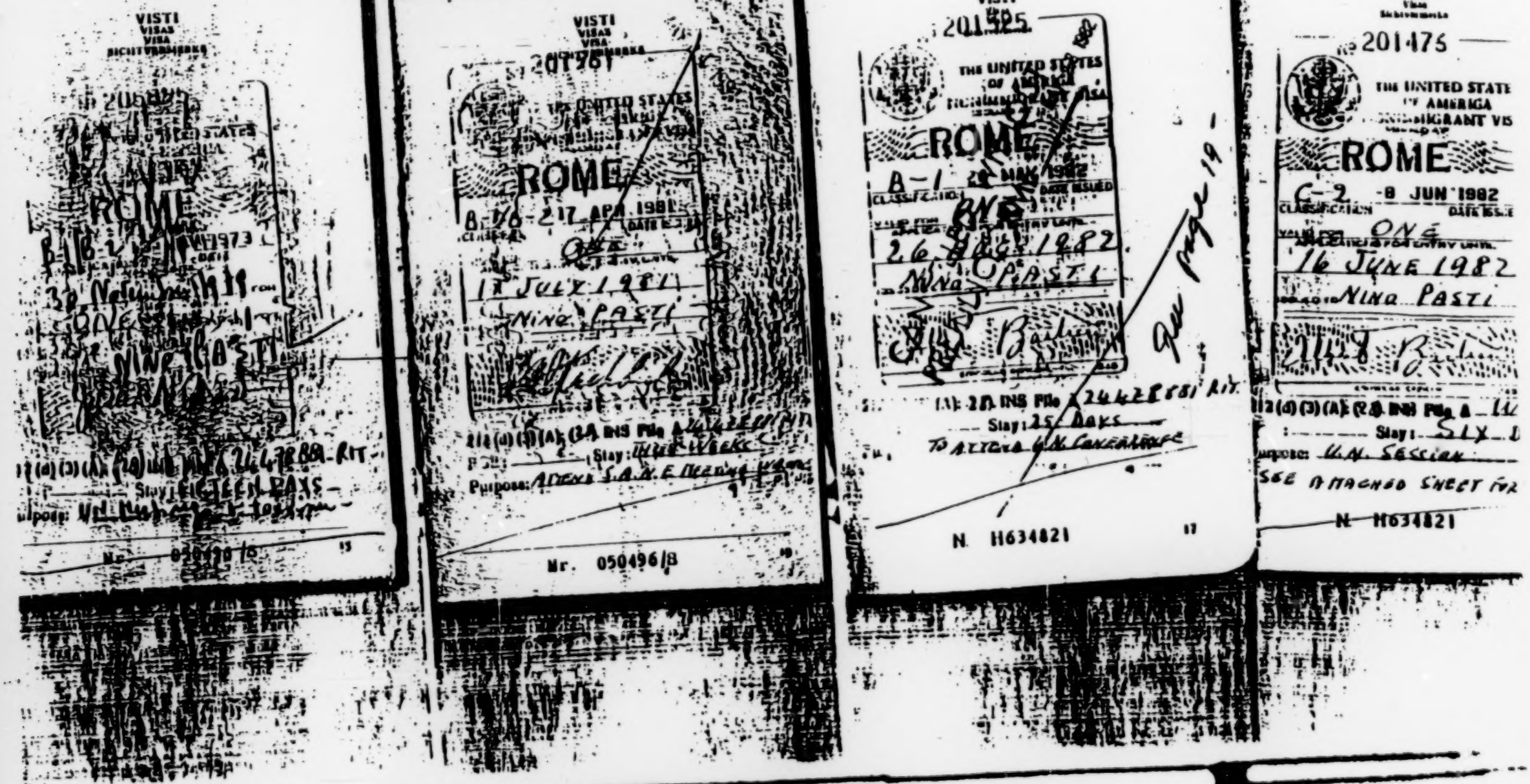
8. I applied for a visa on or about 8 September 1983, for the stated purpose of undertaking a public speaking engagement and went to the American Consulate in Rome then and on two other occasions to answer questions concerning my proposed visit. I was asked whether I was a member of the Communist Party and truthfully responded that I was not. I was asked numerous questions concerning my political activities. The visa was denied shortly thereafter.

9. Based on my professional military and political experience, I have become extremely active in opposing various aspects of NATO military policy which, in my view, are destabilizing and a grave threat to peace and human survival. Because my experience renders me particularly knowledgeable about these matters, I believe that I have a duty to speak to lay audiences who are seeking to understand better the extremely serious issues that the present arms race poses. In that spirit, I accepted the invitation from the plaintiffs in this action to speak to them personally in Boston, and to the rallies they sought to organize. Contingent on securing a visa to do so, I plan to fulfill those Boston invitations, and I have also agreed to come to the United States at the invitation of plaintiff Mobilization for Survival to speak at a series of events.

10. I was not travelling to the United States to engage in any activities that could be considered prejudicial to the public interest of the United States or that could endanger its welfare, safety, or security, or to violate any United States law. To the contrary, my intention was merely to meet face-to-face with plaintiffs and others, to engage in public and private discussions concerning Euromissiles and the arms race generally. In my experience, the give-and-take of discussion and argument can be much more effective than the more passive reading of a written speech, or a letter, or even of a film or videotape, can possibly be. Accordingly, for some years I have been attending numerous international meetings on Euromissiles and nuclear weapons policies; the United States is the only nation which has presumed to exclude me from such meetings or discussions.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed on April ____, 1984.

/s/ NINO PĀSTI
Nino Pasti



BEST AVAILABLE COPY

EMBASSY OF THE
UNITED STATES OF AMERICA
ROME, ITALY

JUNE 8, 1982

NINO PASTI

CONSULAR OFFICER STATEMENT

(A) Visa is issued solely for purpose of attendance at United Nations meeting:
(B) Travel restricted to headquarters district (area within 25 mile radius of Columbus Circle, NYC):
(C) No deviation or extension of stay without prior approval U.S. Immigration Service (COAJ):
(D) Violation of the terms of the visa will make you liable to deportation or other sanctions.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-3739

JAMES ABOUREZK, ET AL., PLAINTIFFS,

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Civil Action No. 83-3741

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Civil Action No. 83-3895

BRUCE CRONIN, ET AL., PLAINTIFFS,

v.

GEORGE P. SHULTZ, ET AL., DEFENDANTS.

SECOND AFFIDAVIT OF LOUIS P. GOELZ

I, Louis P. Goelz, depose and say as follows:

1. I am the Deputy Assistant Secretary of State for Visa Services within the Bureau of Consular Affairs of the Department of State. As such, I occupy the position formerly designated as Director of the Visa Office of the Bureau of Consular Affairs.

2. I have previously given testimony in the above-captioned cases in an affidavit executed February 28, 1984. I am familiar with the testimony of Under Secretary Eagleburger and former Legal Adviser Meeker concerning the denial of nonimmigrant visas under section 212(a)(27)

of the INA for reasons of foreign policy. I offer the following in supplementation of my previous affidavit.

3. In my capacity as Deputy Assistant Secretary for Visa Services I have custody of, and access to, the files of the Visa Office. While visa records are required to be treated as confidential by the terms of section 222(f) of the Immigration and Nationality Act and many documents in visa records are classified under the applicable Executive Order, there are cases in which, because of Congressional inquiry or other public interest, the basic facts of a visa refusal become a matter of public record. Three such cases illustrate the Department's practice over the years, as I have understood it and as described in my affidavit of February 28, 1984.

4. In late 1958, Thomas W. I. Liao, a native of Formosa and a strong supporter of an independent Formosa, independent both of Chiang Kai-Shek and Mao Tse Tung, applied for a visa to visit the United States. In early 1959, his application was refused under section 212(a)(27) of the INA for foreign policy reasons. In a letter of December 10, 1959, to then Senate Foreign Relations Committee Chairman J. W. Fulbright the Department stated:

> As you know, the Republic of China on Taiwan constitutes a vital link in our system of collective security arrangements in the Far East, which in turn forms our first line of defense against Communist aggression in that region. Our relations with the Republic of China are therefore a matter of great national importance to the United States. Thomas W. I. Liao by his own admission is the self-appointed leader of a revolutionary Formosan "government" which seeks to overthrow the Republic of China. The Department has reason to believe that his primary motivation in wishing to enter the United States is to advance this end. Therefore, there is a clear incompatibility between Mr. Liao's projected activities while in the United States and our

foreign policy objectives with respect to Taiwan and the Republic of China. Accordingly we have concluded that under the provisions of Section 212(a)(27) of the Immigration and Nationality Act he is ineligible for a visa.

5. In 1961 and 1962, Mr. Liao again applied for nonimmigrant visas to visit the United States. On both occasions his applications were refused under section 212(a)(27) for the same reasons. On February 5, 1962, the Department informed Senator Leverett Saltonstall of the refusal of Mr. Liao's application under section 212(a)(27).

6. In April 1959, Otto Skorzeny, a former Nazi SS Officer, applied for a visa to visit the United States. His application was refused under section 212(a)(27) of the INA for foreign policy reasons, and, in response to an inquiry, the Department reported the refusal to Congressman Alexander Pirnie by a letter dated June 25, 1959.

7. On June 11, 1964, Mme. Ngo Dinh Nhu, sister-in-law of the deceased Prime Minister of Vietnam, Ngo Dinh Diem, applied for a visa to visit the United States to make several public appearances. On July 3, 1964, the Administrator of the Bureau of Security and Consular Affairs (predecessor of the Assistant Secretary of State for Consular Affairs) informed Mme. Nhu's representative in the United States of the refusal of her application in a letter explaining,

> I am the official within the Executive Branch of the Government responsible for deciding, in an advisory opinion, to deny Madame Nhu's application for a six month visitor visa; and for so advising our Consul in Paris. Therefore I am responding to your telegrams of June 27 and July 2 addressed to the Secretary concerning this case.
>
> For your information, I cite the statement issued by our Embassy in Paris on June 23rd: "Madame Nhu applied for a six-month visitor visa at our Embassy. The consular officer, in accordance with established

procedure, requested an advisiory opinion from the Department of State as to Madame Nhu's eligibility for a visa. In response to the request, the Department of State has advised the consular officer that it considers Madame Nhu ineligible to receive a visa under Section 212(a)(27) of the Immigration and Nationality Act. This section makes ineligible for a visa and inadmissible into the United States 'aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the U.S. solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety or security of the United States.' Madame Nhu has been notified that her application for a visa has been refused."

The consul in Paris and I took into account all pertinent factors—including President Kennedy's press statement of November 14, 1963—before the consul made his determination. Obviously, the most important factor is our commitment to the Government of the Republic of Vietnam which, as you know, we are strongly supporting in its struggle against Communist guerillas. The Vietnamese Government informed us that, because of the repeated denunciations by Madame Nhu of the Government of the Republic of Vietnam, her admission to and her expected activities in the United States would not be understood in Vietnam. Our Embassy in Saigon strongly urged against issuance of a visa because her expected activities would only serve as a demoralizing influence on the people and Government of Vietnam.

In view of all these factors it was determined that issuance of a visa to Madame Nhu would be prejudicial to U.S. interest as cited in the law above.

8. Although there is no record that the Department had corresponded with the Congress on Mme. Nhu's case, its awareness of the visa denial for reasons of foreign policy is documented by the remarks of Senator Thomas Dodd reported at 110 Cong. Rec. 15273 (July 2, 1964).

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 1, 1984.

/s/ LOUIS P. GOELZ
Louis P. Goelz

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES ABOUREZK, 21 DuPont Circle, NW, Suite 400, Washington, D.C. 20036, (202) 775-5960;	)
DOUGLASS CASSEL, JR., 109 North Dearborn, Chicago, Illinois 60602, (312) 641-5570;	)
JOHN COATSWORTH, Department of History, University of Chicago, 1126 E. 59th Street, Chicago, Illinois 60637, (312) 963-8379;	)
REVEREND HARVEY COX, Harvard University, Cambridge, Massachusett 02138, (617) 495-5752;	)
DON EDWARDS, individually and in his capacity as a member of the United States House of Representatives, Washington, D.C. 20515, (202) 225-3072;	)
SIDNEY LENS, 990 Lake Shore Drive, Chicago, Illinois 60611, (312) 787-3916;	)

) FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF Civil Action No.

GEORGE OVERTON, 5648 South Dorchester,
Chicago, Illinois 60637,
(312) 363-8266;

RICHARD PARKER, 777 U.N. Plaza,
New York, New York 10017,
(212) 682-0889;

CHARLES E. SCHUMER, individually and in his capacity as a member of the United States House of Representatives, Washington, D.C., 20515, (202) 225-6616;

JAMES M. SHANNON, individually and in his capacity as a member of the United States House of Representatives, Washington, D.C. 20515, (202 225-3411;

PAUL TSONGAS, individually and in his capacity as a Member of the United States Senate, Washington, D.C. 20515,
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DR. DANA McLEAN GREELEY,
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PHILLIPPE VILLERS,
20 Whits End Road,
Concord, Massachusetts 01742,
(617) 369-1053;
Plaintiffs,

v.

RONALD WILSON REAGAN,
President of the United States,
The White House,
1600 Pennsylvania Avenue,
Washington, D.C. 20500;

GEORGE P. SHULTZ,
Secretary of State,
Department of State,
Washington, D.C. 20520;

WILLIAM FRENCH SMITH,
Attorney General.
Department of Justice,
Washington, D.C. 20530; and

ALAN C. NELSON,
Director of the Immigration and
Naturalization Service,
425 I Street, N.W.,
Washington, D.C. 20536,
Defendants.

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief challenging defendants' refusal to grant a visa to Tomas Borge, Interior Minister of Nicaragua. It is brought by members of Congress and other interested Americans vitally concerned about recent events in Latin America and United States policy toward that region. To educate themselves further about those events, plaintiffs either arranged or planned to attend speaking engagements by Mr. Borge about the present situation in Nicaragua. The only asserted basis for Mr. Borge's exclusion from the United States is that, in defendants' view, his speech here would be "prejudicial to the public interest." As a result of that determination, the unique and important perspective that Mr. Borge can offer plaintiffs and other American citizens on United States policy in Central America has been barred from this country.

2. The exclusion of Mr. Borge from the United States for ideological reasons is not an isolated event. Rather, the defendants have employed their visa authority to shape and limit political debate within the United States. The purpose and effect of this policy has been to deny Americans the opportunity to hear and meet with significant and respected critics of American policy, and advocates of policies which differ from ours. Such a pattern and practice of ideological exclusions is inconsistent with the basic premises of a free society. Defendants' actions in this regard violate congressional intent as well as the constitutional guarantees of free speech and assembly embodied in the First Amendment.

JURISDICTION AND VENUE

3. Jurisdiction is properly vested in this Court pursuant to 28 U.S.C. §§ 1331 and 1361 and 8 U.S.C. § 1329,

over causes of action arising under 8 U.S.C. § 1182(a)(27), 5 U.S.C. § 702, and the First and Fifth Amendments to the Constitution.

4. The venue of this action lies in this district under the provisions of 28 U.S.C. § 1391 (e).

PLAINTIFFS

5. James Abourezk is an attorney and former United States Senator from South Dakota. He had scheduled a lunch at his home with Mr. Borge for members of Congress, Presidential candidates, and other interested persons.

6. Douglass Cassel, Jr., a citizen of the United States and the state of Illinois, is an attorney and a journalist. Having been advised by the Chicago Inter-Religious Task Force of Mr. Borge's visit to Chicago, Mr. Cassel arranged a number of discussions between Mr. Borge and various bar and business groups in Chicago, including a luncheon with officials of the International Business Council Mid-America and a reception at the Chicago Bar Association (CBA). These events were to have been held on December 5, 1983. Announcements to CBA's Board of Managers, its International Law Committee, and other of its committees, were prepared and about to be mailed when Mr. Cassel and CBA were informed that defendants had denied Mr. Borge's visa application. Mr. Cassel had intended to attend that and other receptions, and to interview Mr. Borge for plaintiff *Chicago Lawyer*. Mr. Cassel also had helped arrange an interview of Mr. Borge by the reporter who conducts a regular weekly international affairs program on an educational radio station in Chicago. Mr. Cassel was looking forward ~~to an ex~~change of views and information with Mr. Borge as a citizen and as a voter attempting to inform himself, as a professional with an interest in international law, and as a journalist. If Mr. Borge receives a visa to visit Chicago, Mr. Cassel intends

to interview him and to arrange discussions between him and various bar and business groups. Mr. Cassel has received continuing expressions of interest on meetings from both the CBA and International Business Council in the event Mr. Borge is granted a visa.

7. John Coatsworth is a Professor of History at the University of Chicago. He had planned a faculty luncheon and speaking engagement for Mr. Borge at the University of Chicago.

8. Reverend Harvey Cox is a Professor of Divinity at Harvard University. He had planned two meetings for Mr. Borge with religious leaders in the Boston area on December 9 and December 11, 1983.

9. Don Edwards is a member of Congress from the Tenth Congresional District in California. To better inform himself about events in Latin America, he had planned to meet with Mr. Borge during his visit to the United States.

10. Sidney Lens in a senior editor of Progressive magazine. He worked in conjunction with the Chicago Religious Task Force to set up the meetings referred to in paragraph 6.

11. George Overton is a citizen of Illinois, active in public affairs and concerned with the appropriate and correct action of this country in Central America. His ability to make judgments on the issues raised by current U.S. policies in Central America would have been enhanced by the presence of Mr. Borge in Chicago and the meetings that were scheduled between Mr. Borge and members of the public and the press. The exclusion of Mr. Borge therefore deprives the plaintiff of his right to receive free and uncensored information.

12. Richard Parker is the Executive Director of the Sunflower Foundation, a private foundation that gives grants to grass-roots organizations and funds international information exchanges. The Sunflower Foundation

had planned a reception with Mr. Borge at the UN Plaza Hotel on December 6, 1983, for funders interested in Central American problems and issues.

13. James M. Shannon is a member of Congress from the Fifth District of Massachusetts. To better inform himself about events in Latin America, he had planned to meet with Mr. Borge during his visit to the United States. He had arranged a meeting between Mr. Borge and the Massachusetts Congressional delegation for December 10, 1983.

14. Charles E. Schumer is a member of Congress from the 23rd District of New York. To better inform himself about events in Latin America, he intended to attend at least one of the meetings scheduled between Mr. Borge and members of Congress.

15. Paul Tsongas is a United States Senator from the state of Massachusetts. To better inform himself to fulfill his obligations as Senator and citizen he had planned to discuss the Central American situation with Mr. Borge in both Washington, D.C. and Boston.

16. Mortimer B. Zuckerman is the chairman of Atlantic Monthly Magazine. He had planned a brunch at his home with Mr. Borge on December 10, 1983, and invited church leaders, journalists, members of the banking and academic community, as well as Senators Tsongas and Kennedy.

17. The Chicago Lawyer, Ltd. is an Illinois limited partnership that publishes *Chicago Lawyer,* a monthly newspaper addressing issues of concern to the legal community in Chicago. *Chicago Lawyer* frequently publishes interviews with persons of interest to the legal community in Chicago, and has published previous interviews conducted by Mr. Cassel. Through its editor, *Chicago Lawyer* was engaged in discussions about publishing Mr. Cassel's planned interview of Mr. Borge at the time it learned that Mr. Borge's visa was denied. Mr. Cassel intends to inter-

view Mr. Borge, and *Chicago Lawyer* intends to publish that interview, if Mr. Borge receives a visa to visit Chicago.

18. The Chicago Religious Task Force on Central America is a coalition of more than 40 local religious groups engaged in education on Central America. It had coordinated a series of meetings for Mr. Borge with the Chicago legal, religious, business, academic and journalistic communities, including two speaking engagements on December 4 and December 5, 1983.

19. The First Parish Church had intended to sponsor a meeting for its parishioners with Mr. Borge during his visit to the Boston area.

20. The Institute for Policy Studies is an independent research organization and educational institute established in 1963. It had planned a reception for Mr. Borge on December 2, 1983 with Congressional staff as well as church, foreign policy and civil liberties groups. In addition, it had scheduled a seminar with Mr. Borge for Institute board, staff, and fellows on December 3, 1983.

21. The Unitarian Universalist Service Committee is a non-sectarian, Boston-based human rights agency. It had planned three days of meetings, press conferences, and speaking engagements for Mr. Borge in the Boston area from December 9-11, 1983, with religious, academic, business and press groups as well as civic leaders and members of the Massachusetts Congressional delegation.

21a. Dr. Dana McLean Greeley is minister of the First Parish Church (Unitarian) of Concord, Massachusetts. On behalf of his congregation, Dr. Greeley had planned to host a public meeting in December 1983 featuring Minister Borge.

21b. Mr. Philippe Villers is chairperson of the Social Responsibility Committee of the First Parish Church (Unitarian) of Concord, Massachusetts. Together with Dr.

Greeley, *supra* § 21a, he had planned to host a public meeting featuring Minister Borge during December 1983.

22. The Washington Office on Latin America is a non-profit, constituency-based human rights advocacy group established in 1974. Along with the Institute for Policy Studies, it had planned a large reception for Mr. Borge on December 2, 1983. It had also set up meetings for Mr. Borge with members of Congress on November 30, December 1, and December 2, 1983.

DEFENDANTS

23. Ronald Reagan is President of the United States. In this capacity, it is his duty to "take care that the laws be faithfully executed," and "to uphold the Constitution of the United States." He is responsible for all actions of all the defendants and their agents. Defendant Reagan is sued solely in his official capacity.

24. George P. Shultz is the Secretary of State of the United States and the executive head of the Department of State. In that capacity and through his agents, he issues non-immigrant visas under 8 U.S.C. § 210(a)(2) and determines ineligibility for receiving such visas under 8 U.S.C. § 1182(a)(27). Defendant Shultz is sued solely in his official capacity.

25. William French Smith is the Attorney General of the United States. In that capacity and through his agents, he exercises the power to bar visitors to the United States, including those who receive visas from the Secretary of State, under 8 U.S.C. § 1182(a)(27) and otherwise. Defendant Smith is sued solely in his official capacity.

26. Alan C. Nelson is the Commissioner of the Immigration and Naturalization Service. In that capacity and through his agents, he exercises the power to bar visitors to the United States, including those who receive visas from the Secretary of State. Defendant Nelson is sued soley in his official capacity.

STATEMENT OF THE CASE

27. In the fall of 1983, Mr. Borge received the invitations described above to meet with Americans from a wide range of backgrounds and to discuss with them and provide them information on Nicaraguan relations with the United States, the situation generally in Central America, and the chances of achieving peace in the region. Mr. Borge also received invitations to meet with, *inter alia,* other Congresspersons, the Council on Foreign Relations in New York, the Chicago Bar Association, the International Business Council in Chicago, the Wilson International Center for Scholars, and the School of Advanced International Studies.

28. For the purpose of accepting those invitations, Mr. Borge applied for a visa on or about November 15, 1983, to visit the United States temporarily, in late November and early December, for the stated purpose of meeting and speaking with members of Congress, other individuals, and the university, foreign affairs, and Bar groups which had scheduled meetings with him.

29. In late November, 1983, Mr. Borge's application for a visa was officially denied under Section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27). That section renders ineligible for visas

> [a]liens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest or endanger the welfare, safety, or security of the United States.

30. On information and belief, defendants Shultz and Smith determinted to grant the visa, but President Reagan overruled their decisions.

31. On information and belief, the basis for the decision to deny the visa application was, in the words of an unnamed White House official quoted in the *New York*

Times, that "the government did not want to give Mr. Borge a propaganda platform in the United States."

32. On information and belief, had Mr. Borge sought a visa to enter the United States for sport, cultural or other non-political purposes, his visa would have been granted.

33. As recently as August 1983, defendants determined that Mr. Borge was eligible for a visa to enter the United States and to engage in discussions similar to those plaintiffs have scheduled with Mr. Borge.

34. The defendants do not in fact know or have reason to believe that Mr. Borge plans to or would engage in any activities within the United States on his proposed visits that would be prejudicial to the public interest or endanger the welfare, safety or security of the United States or would otherwise be in violation of the Immigration and Nationality Act.

35. Upon information and belief, the defendants denied Mr. Borge a visa because of his political views and the expected content of his speech in the United States.

36. Upon information and belief, the denial of a visa to Mr. Borge is part of a pattern and practice by defendants of denying visas to foreign critics of American policy in Central America and elsewhere, particularly those with special knowledge or credibility.

37. Upon information and belief, the denial of a visa to Mr. Borge is only one aspect of the government's pattern and practice of unlawfully curtailing the information available on foreign affairs to American citizens by a variety of means.

38. Defendants' exclusion of Mr. Borge from the United States is not authorized by Section 212(a)(27), and is not based on legitimate, lawful and bona fide reasons.

39. On information and belief, defendants' exclusion of Mr. Borge is intended to preclude congressional critics of United States policy concerning Nicaragua from informing themselves, their colleagues in Congress, and their

constituents, so as to be able effectively to discharge their constitutional functions.

40. Defendants' exclusion of Mr. Borge has the effect of precluding congressional critics of United States policy concerning Nicaragua from informing themselves, their colleagues in Congress, and their constituents, so as to be able effectively to discharge their constitutional duties.

41. The invitations extended to Mr. Borge by plaintiffs and others is open and continuing and Mr. Borge has accepted the invitations on a continuing basis, contingent on the granting of a visa.

42. Defendants' actions in this case have caused and continue to threaten irreparable damage to plaintiffs' First Amendment rights as citizens and voters to meet, converse and inform themselves about some of the most critical issues facing America today.

43. Defendants' actions in this case are arbitrary and capricious.

44. Plaintiffs lack any adequate remedy at law.

CAUSES OF ACTION

45. Defendants' actions in this case are not authorized by section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27), which bars any alien who seeks "to enter the United States solely, principally, or incidentally to engage in *activities* which would be prejudicial to the public interest or endanger the welfare, safety or security of the United States" (emphasis added). It neither contemplates nor permits the exclusion of aliens based on political beliefs or associations or the anticipated content of an alien's political speech in the United States.

46. Defendants' refusal to grant Mr. Borge a visa is not based on any knowledge or "reason to believe" that he seeks "to engage in activities which would be prejudicial to the public interest or endanger the welfare, safety, or security of the United States." Absent such knowledge or

reason to believe, defendants' actions exceed their statutory authority under section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27).

47. For the reasons recited above, defendants' refusal to grant Mr. Borge a visa to speak in the United States is arbitrary and capricious in violation of the Administrative Procedure Act, 5 U.S.C. § 706.

48. Insofar as section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27), is construed to permit the exclusion of an alien on the basis of his political associations or the political speech in which he would engage were he admitted, it constitutes a vague, overbroad and standardless delegation of authority to the Executive branch to curtail political debate in the United States on the basis of content in violation of the First Amendment.

49. Defendants' exclusion of Mr. Borge from the United States abridges the right of plaintiffs, as well as others in this country, to meet, discuss and exchange ideas on subjects of vital national interest, in violation of the First Amendment.

50. Defendants' application to this case of section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27), is part of a pattern and practice of ideological exclusions by the Executive branch which has limited the opportunities for citizens in this country to meet, discuss and exchange ideas with foreigners holding controversial views, in violation of the First Amendment.

51. Defendants' application of 8 U.S.C. § 1182(a)(27) to bar certain aliens who seek visas to engage in political speech in the United States, but not to bar those same aliens or persons similarly situated who seek visas for sport, cultural or other non-political purposes, constitutes a content-based discrimination against political speech in violation of the First Amendment and denies plaintiffs the equal protection of the laws.

52. Defendants exclusion of Mr. Borge is intended and has the effect of limiting Congress' capacity to inform itself fully as to matters concerning Nicaragua, thereby depriving Congress of the information it requires to undertake its legislative function, in violation of the doctrine of separation of powers.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief against the defendants, their successors and subordinates:

a) A declaration that defendants' refusal to grant Mr. Borge an entry visa is not authorized by section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27), and violates the free speech guarantee of the First Amendment;

b) An order directing defendants to issue Mr. Borge an appropriate entry visa so that he may accept the invitations proffered by plaintiffs and other groups in this country who wish to hear his views;

c) An injunction prohibiting defendants from continuing to interpret and apply section 212(a)(27) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(27), in a manner that is inconsistent with the terms and intent of the statute and which violates the guarantees of the First Amendment;

d) Such other and further relief as this Court deems just and proper; and

e) The costs and attorneys' fees incurred in this action.

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Dated: May 2, 1984

Attorneys for Plaintiffs

In the Supreme Court of the United States

RONALD W. REAGAN, PETITIONER

v.

JAMES ABOUREZK, ET AL.

ORDER ALLOWING CERTIORARI. *Filed December 15, 1986.*

The petition herein for a writ of certiorari to the *United States Court of Appeals for the District of Columbia* is granted.

Justice Scalia took no part in the consideration or decision of this petition.

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